

1 Ben F. Pierce Gore (SBN 128515)
 2 PRATT & ASSOCIATES
 3 1871 The Alameda, Suite 425
 4 San Jose, CA 95126
 5 Telephone: (408) 429-6506
 6 Fax: (408) 369-0752
 7 pgore@prattattorneys.com

8 *Attorney for Plaintiffs*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 MARKUS WILSON and DOUG
 14 CAMPEN, individually and on behalf of all
 15 others similarly situated,

16 Plaintiffs,
 17 v.

18 FRITO-LAY NORTH AMERICA, INC.,
 19 Defendant.

20 Case No. 3:12-CV-01586-SC

21 **SECOND AMENDED CLASS ACTION
 22 AND REPRESENTATIVE ACTION
 23 COMPLAINT FOR DAMAGES,
 24 EQUITABLE AND INJUNCTIVE RELIEF**

25 **JURY TRIAL DEMANDED**

26 Plaintiffs, Markus Wilson and Doug Campen, ("Plaintiffs") through their undersigned
 27 attorneys, bring this lawsuit against Defendant Frito-Lay North America, Inc. ("Frito-Lay" or
 28 "Defendant") as to their own acts upon personal knowledge and as to all other matters upon
 information and belief.

29 **DEFINITIONS**

30 1. "Class Period" is March 29, 2008 to the present.
 31 2. "Purchased Products" are the products listed below (2a-2e) that were purchased by
 32 Plaintiffs during the Class Period. Plaintiff Wilson and Plaintiff Campen purchased 2a.
 33 Additionally, Plaintiff Campen purchased 2b-2e. Pictures of the Plaintiffs' Purchased Products
 34 are attached as Exhibits 1-5 and specific descriptions of the labels are included below:
 35 a. Lay's Classic Potato Chips;
 36 b. Lay's Honey Barbecue Potato Chips;

- c. Kettle Cooked BBQ Potato Chips;
- d. Cheetos Puffs; and
- e. Fritos Original Corn Chips.

4 3. “Class Products” are the products listed below in paragraph 178 that were
5 purchased by Class Members and contain the same or similar ingredients and/or the same or
6 similar labels as the “Purchased Products.”

SUMMARY OF THE CASE

8 4. Plaintiffs' case has two distinct facets. First, the "UCL unlawful" part. Plaintiffs'
9 first cause of action is brought pursuant to the unlawful prong of California's Unfair Competition
10 Law, Cal. Bus. & Prof. Code § 17200 ("UCL"). Plaintiffs allege that Defendant packages and
11 labels the Purchased Products in violation of California's Sherman Law which adopts,
12 incorporates, and is identical to the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*
13 ("FDCA"). These violations (which do not require a finding that the labels are "misleading")
14 render the Purchased Products "misbranded" which is no small thing. Under California law, a
15 food product that is misbranded cannot legally be manufactured, advertised, distributed, held or
16 sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are
17 legally worthless. Indeed, the sale or possession of misbranded food is a criminal act in
18 California. The sale of such products is illegal under federal law and can result in the seizure of
19 misbranded products and the imprisonment of those involved. This "misbranding" – standing
20 alone without any allegations of deception by Defendant or review of or reliance on the labels by
21 Plaintiffs – give rise to Plaintiffs' first cause of action under the UCL. To state a claim under the
22 unlawful prong, Plaintiffs need only allege that they would not have purchased the product had
23 they known it was misbranded that would have resulted in their possessing a product that is
24 illegal to own or possess. This claim does not sound in fraud.

25 5. Under California law, which is identical to federal law, Defendant's products listed
26 below are unlawful because they are misbranded due to violations of the Sherman Law, as alleged
27 herein:

Purchased Product	Relevant Label Language	Sherman Law Violation (directly or through incorporation of FDCA)
Lay's Classic Potato Chips	"0g Trans Fat"	21 C.F.R. § 101.13 21 C.F.R. § 1.21 Cal. Health & Safety Code § 110100 Cal. Health & Safety Code § 110660
Lay's Honey Barbecue Potato Chips	"0g Trans Fat" "All Natural"	21 C.F.R. § 101.13 21 C.F.R. § 101.22 21 C.F.R. § 1.21 Cal. Health & Safety Code § 110740 Cal. Health & Safety Code § 110100 Cal. Health & Safety Code § 110660
Kettle Cooked BBQ Potato Chips	"0g Trans Fat" "All Natural" "No MSG"	21 C.F.R. § 101.13 21 C.F.R. § 101.22 21 C.F.R. § 1.21 Cal. Health & Safety Code § 110740 Cal. Health & Safety Code § 110100 Cal. Health & Safety Code § 110660
Cheetos Puffs	"0g Trans Fat"	21 C.F.R. § 101.13 21 C.F.R. § 1.21 Cal. Health & Safety Code § 110100 Cal. Health & Safety Code § 110660
Fritos Original Corn Chips	"0g Trans Fat"	21 C.F.R. § 101.13 21 C.F.R. § 1.21 Cal. Health & Safety Code § 110100 Cal. Health & Safety Code § 110660

6. Defendant's products which contain the same or similar label and/or ingredients listed are also unlawful under California and federal because they are misbranded due to violations of the Sherman Law.

7. Defendant also violated the Sherman Law provisions listed in paragraphs 144-157 for manufacturing, offered to sell, deliver, etc. misbranded food.

8. Second, the "misleading" part. Plaintiffs allege that the illegal statements contained on the labels of the Purchased Products and the Class Products – aside from being unlawfully misbranded under the Sherman Law – are also misleading, deceptive, unfair and

1 fraudulent. Plaintiffs describe these labels and how they are misleading. Plaintiffs allege that
2 prior to purchase they reviewed the illegal statements on the labels of the Purchased Products,
3 reasonably relied in substantial part on the unlawful label statements, and were thereby deceived,
4 in deciding to purchase the Purchased Products. Had Plaintiffs known that these food products
5 were misbranded there would have been no purchases.

6 9. All of the Purchased Products and the Class Products have labels that are (i)
7 unlawful and misbranded under the Sherman Law and (ii) misleading and deceptive. Plaintiffs
8 did not know, and had no reason to know, that Defendant's Purchased Products were misbranded
9 under the Sherman Law and bore food labeling claims that failed to meet the requirements to
10 make those food labeling claims. Similarly, Plaintiffs did not know, and had no reason to know,
11 that the labels on Defendant's Purchased Products were false and misleading.

BACKGROUND

13 10. Every day, millions of Americans purchase and consume packaged foods.
14
15
16
17
18
Identical federal and California laws require truthful, accurate information on the labels of
packaged foods. This case is about a company that flouts those laws. The law is clear: misbranded
food cannot legally be manufactured, held, advertised, distributed or sold. Misbranded food has
no economic value and is worthless as a matter of law, and purchasers of misbranded food are
entitled to a refund of their purchase price.

19 11. Defendant manufactures, markets and sells a variety of foods, including the
20 Purchased Products and the Class Products.

21 12. Defendant has implemented a campaign to label its products as healthy and
22 associated with wellness.

23 13. Defendant recognizes that health and wellness claims drive food sales, and
24 actively promotes the purported health benefits of its products, notwithstanding the fact that these
25 promotions violate California and federal law.

26 14. If a manufacturer is going to make a claim on a food label, they must not violate
27 certain California laws and ensure that consumers are not misled by food labels. As described
28 more fully below, Defendant has made, and continues to make, unlawful labeling claims in

violation of federal and California laws that govern the types of representations that can be made on food labels. Defendant's product labels violate California law and therefore are misbranded.

15. These California food labeling laws recognize that reasonable consumers are likely to choose products claiming to have a health or nutritional benefit over otherwise similar food products that do not claim such benefits. More importantly, these laws recognize that the failure to disclose the presence of risk-increasing nutrients is deceptive because it conveys to consumers the net impression that a food makes only positive contributions to a diet, or does not contain any nutrients at levels that raise the risk of diet-related disease or health-related condition.

16. Plaintiffs' claims are brought under California statutes and for violations of the Sherman Law. Under California law, which is identical to federal law, the labels and labeling of Defendant's products listed below are unlawful and also misleading in the following manner:

- A. Making unlawful and misleading “All Natural” claims;
- B. Making unlawful and misleading “No MSG” claims;
- C. Making unlawful and misleading nutrient content claims and failing to meet the minimum nutritional requirements that are legally required for the nutrient content claims that are being made;
- D. Making unlawful and misleading “0g Trans Fat” claims;
- E. Making unlawful and misleading website “low sodium” claims; and
- F. Making unlawful and unapproved health claims on its website¹ that are prohibited by law.

17. Defendant's products, referenced in paragraphs 44, 62 and 84 which contain the same unlawful statements and the same ingredients as the Purchased Products are similarly unlawful and misleading. In determining whether or not a plaintiff had standing to pursue claims on products she had not purchased, but which contained the same or similar label and/or ingredients, this Court concluded:

there is more than enough similarity between the Chocolate Peanut Butter Bars allegedly purchased and the other nineteen varieties of nutrition bars identified in

¹ Since the date of Plaintiff's initial filing, Defendant has taken steps to remove some of the language complained and challenged as being illegal by Plaintiffs from their website, www.lays.com.

1 the Complaint. The accused products are all of a single kind, that is, they are all
 2 nutrition bars. They share a uniform size and shape. On casual inspection, the
 3 only obvious difference between the bars is their flavor. Closer inspection reveals
 4 some difference between the ingredients used in different flavors, but the
 similarities are more striking: six of the nine challenged ingredients appear in all
 twenty nutrition bar flavors. *See Compl. ¶ 42.* Most importantly, all twenty
 flavors bear the same challenged label: “All-Natural Nutrition Bars.”

5 *Colucci v. ZonePerfect Nutrition Co.*, 12-2907-SC, 2012 WL 6737800, at *4 (N.D. Cal. Dec. 28,
 6 2012).

7 18. These practices are not only illegal but they mislead consumers and deprive them
 8 of the information they require to make informed purchasing decisions. Thus, for example, a
 9 mother who reads labels because she wants to purchase all natural and healthy food, and does not
 10 wish to feed her child unhealthy foods or highly processed foods, would be misled by
 11 Defendant’s practices and labeling.

12 19. Similarly, California and federal laws have placed numerous requirements on food
 13 companies that are designed to ensure that the claims that companies make about their products to
 14 consumers are truthful, accurate and backed by acceptable forms of scientific proof. When
 15 companies such as Defendant make false and unlawful nutrient content and health-related and
 16 other labeling claims that are prohibited by regulation, consumers such as Plaintiffs are misled.

17 20. Identical California and federal laws regulate the content of labels on packaged
 18 food. The requirements of the federal FDCA were adopted by the California legislature in the
 19 Sherman Law. Under both the Sherman Law and FDCA section 403(a), food is “misbranded” if
 20 “its labeling is false or misleading in any particular,” or if it does not contain certain information
 21 on its label or its labeling. Cal. Health & Safety Law 110660; 21 U.S.C. § 343(a).

22 21. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the
 23 term “misleading” is a term of art. Misbranding reaches not only false claims, but also those
 24 claims that might be technically true, but still misleading. If any one representation in the
 25 labeling is misleading, the entire food is misbranded, and no other statement in the labeling can
 26 cure a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking
 27 and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O-*
28 Pathic Pharmacy, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove

that anyone was actually misled.

22. In promoting the nutritional and health benefits of its Purchased Products and the Class Products, Defendant has claimed to understand the importance of communicating responsibly about its products. Nevertheless, Defendant has made, and continues to make, false and deceptive claims about its Purchased Products and the Class Products in violation of identical federal and California laws that govern the types of representations that can be made on food labels.

23. Defendant also has made, and continues to make, unlawful claims on food labels of its Purchased Products and the Class Products that are prohibited by federal and California law and which render these products misbranded. Under federal and California law, Defendant's Purchased Products and the Class Products cannot legally be manufactured, advertised, distributed, held or sold.

24. Defendant also has made, and continues to make unlawful claims on its website, which is also considered food labeling, of its Purchased Products and the Class Products that are prohibited by federal and California law and which render these products misbranded. Under federal and California law, Defendant's Purchased Products and Class Products cannot legally be manufactured, advertised, distributed, held or sold.

25. Defendant's violations of law are the illegal advertising, marketing, distribution, delivery and sale of Defendant's misbranded Purchased Products and the Class Products to consumers in California and throughout the United States.

PARTIES

26. Plaintiff Markus Wilson is a resident of Santa Rosa, California who purchased Defendant's Lay's Classic Potato Chips in California during the Class Period. Attached hereto are copies of photographs of the package label on the product purchased by Plaintiff Markus Wilson (Exhibit 1). Plaintiff Wilson purchased more than \$25.00 of Lay's Classic Potato Chips during the Class Period.

27. Plaintiff Doug Campen is a resident of Santa Rosa who purchased Defendant's Lay's Classic Potato Chips, Lay's Honey Barbecue Potato Chips (Exhibit 2), Lay's Kettle

1 Cooked Mesquite BBQ Potato Chips (Exhibit 3), Cheetos Puffs (Exhibit 4), and Fritos Original
 2 Corn Chips (Exhibit 5) in California during the Class Period. Exhibits 2-5 are copies of
 3 photographs of product labels on the products purchased by Plaintiff Doug Campen. Plaintiff
 4 Campen purchased more than \$25.00 of these products during the Class Period.

5 28. Defendant Frito-Lay North America, Inc. is a Texas corporation with its principal
 6 place of business at 7701 Legacy Drive, Plano Texas.

7 **JURISDICTION AND VENUE**

8 29. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
 9 § 1332(d) because this is a class action in which: (1) there are over 100 members in the proposed
 10 class; (2) members of the proposed class have a different citizenship from Defendant; and (3) the
 11 claims of the proposed class members exceed \$5,000,000 in the aggregate.

12 30. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to
 13 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is
 14 between citizens of different states.

15 31. The Court has personal jurisdiction over Defendant because a substantial portion
 16 of the wrongdoing alleged in this Second Amended Complaint occurred in California, Defendant
 17 is authorized to do business in California, Defendant has sufficient minimum contacts with
 18 California, and Defendant otherwise intentionally avails itself of the markets in California
 19 through the promotion, marketing and sale of merchandise, sufficient to render the exercise of
 20 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

21 32. Because a substantial part of the events or omissions giving rise to these claims
 22 occurred in this District and because the Court has personal jurisdiction over Defendant, venue is
 23 proper in this Court pursuant to 28 U.S.C. § 1331(a) and (b).

24 **FACTUAL ALLEGATIONS**

25 **A. Identical California and Federal Laws Regulate Food Labeling**

26 33. Food manufacturers are required to comply with identical federal and state laws
 27 and regulations that govern the labeling of food products. First and foremost among these is the
 28 FDCA and its labeling regulations, including those set forth in 21 C.F.R. § 101.

1 34. Pursuant to the Sherman Law, California has expressly adopted the federal
 2 labeling requirements as its own and indicated that “[a]ll food labeling regulations and any
 3 amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993,
 4 or adopted on or after that date shall be the food regulations of this state.” California Health &
 5 Safety Code § 110100.

6 35. In addition to its blanket adoption of federal labeling requirements, California has
 7 also enacted a number of laws and regulations that adopt and incorporate specific enumerated
 8 federal food laws and regulations. For example, food products are misbranded under California
 9 Health & Safety Code § 110660 if their labeling is false and misleading in one or more
 10 particulars; are misbranded under California Health & Safety Code § 110665 if their labeling fails
 11 to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and
 12 regulations adopted thereto; are misbranded under California Health & Safety Code § 110670 if
 13 their labeling fails to conform with the requirements for nutrient content and health claims set
 14 forth in 21 U.S.C. § 343(r) and regulations adopted thereto; are misbranded under California
 15 Health & Safety Code § 110705 if words, statements and other information required by the
 16 Sherman Law to appear on their labeling are either missing or not sufficiently conspicuous; are
 17 misbranded under California Health & Safety Code § 110735 if they are represented as having
 18 special dietary uses but fail to bear labeling that adequately informs consumers of their value for
 19 that use; and are misbranded under California Health & Safety Code § 110740 if they contain
 20 artificial flavoring, artificial coloring and chemical preservatives but fail to adequately disclose
 21 that fact on their labeling.

22 **B. FDA Enforcement History**

23 36. In recent years the FDA has become increasingly concerned that food
 24 manufacturers have been disregarding food labeling regulations. To address this concern, the
 25 FDA informed the food industry of its concerns and placed the industry on notice that food
 26 labeling compliance was an area of enforcement priority.

1 37. In October 2009, the FDA issued its 2009 *Guidance for Industry: Letter*
 2 *regarding Point of Purchase Food Labeling* (“2009 FOP Guidance”) to the food industry that
 3 stated in part:

4 FDA’s research has found that with FOP labeling, people are less likely to check
 5 the Nutrition Facts label on the information panel of foods (usually, the back or
 6 side of the package). It is thus essential that both the criteria and symbols used in
 7 front-of-package and shelf-labeling systems be nutritionally sound, well-
 8 designed to help consumers make informed and healthy food choices, and not be
 9 false or misleading. The agency is currently analyzing FOP labels that appear to
 10 be misleading. The agency is also looking for symbols that either expressly or
 11 by implication are nutrient content claims. We are assessing the criteria
 12 established by food manufacturers for such symbols and comparing them to our
 13 regulatory criteria.

14 It is important to note that nutrition-related FOP and shelf labeling, while
 15 currently voluntary, is subject to the provisions of the Federal Food, Drug, and
 16 Cosmetic Act that prohibit false or misleading claims and restrict nutrient
 17 content claims to those defined in FDA regulations. Therefore, FOP and shelf
 18 labeling that is used in a manner that is false or misleading misbrands the
 19 products it accompanies. Similarly, a food that bears FOP or shelf labeling with a
 20 nutrient content claim that does not comply with the regulatory criteria for the
 21 claim as defined in Title 21 Code of Federal Regulations (CFR) 101.13 and
 22 Subpart D of Part 101 is misbranded. We will consider enforcement actions
 23 against clear violations of these established labeling requirements. . . .

24 ... Accurate food labeling information can assist consumers in making healthy
 25 nutritional choices. FDA intends to monitor and evaluate the various FOP
 26 labeling systems and their effect on consumers’ food choices and perceptions.
 27 FDA recommends that manufacturers and distributors of food products that
 28 include FOP labeling ensure that the label statements are consistent with FDA
 29 laws and regulations. FDA will proceed with enforcement action against
 30 products that bear FOP labeling that are explicit or implied nutrient content
 31 claims and that are not consistent with current nutrient content claim
 32 requirements. FDA will also proceed with enforcement action where such FOP
 33 labeling or labeling systems are used in a manner that is false or misleading.

34 38. The 2009 FOP Guidance is attached hereto as Exhibit 6.

35 39. Defendant had actual knowledge of the 2009 FOP Guidance.

36 40. Although Defendant had actual knowledge of the 2009 FOP Guidance, Defendant
 37 did not remove the (i) unlawful and (ii) misleading labels from its Purchased Products or the
 38 Class Products.

39 41. On March 3, 2010, the FDA issued an “*Open Letter to Industry from [FDA*
 40 *Commissioner] Dr. Hamburg*” (“Open Letter”). The Open Letter reiterated the FDA’s concern
 41 regarding false and misleading labeling by food manufacturers. In pertinent part, the letter stated:

1 In the early 1990s, the Food and Drug Administration (FDA) and the food
 2 industry worked together to create a uniform national system of nutrition labeling,
 3 which includes the now-iconic Nutrition Facts panel on most food packages. Our
 4 citizens appreciate that effort, and many use this nutrition information to make
 5 food choices. Today, ready access to reliable information about the calorie and
 6 nutrient content of food is even more important, given the prevalence of obesity
 7 and diet-related diseases in the United States. This need is highlighted by the
 8 announcement recently by the First Lady of a coordinated national campaign to
 9 reduce the incidence of obesity among our citizens, particularly our children.

10 With that in mind, I have made improving the scientific accuracy and usefulness
 11 of food labeling one of my priorities as Commissioner of Food and Drugs. The
 12 latest focus in this area, of course, is on information provided on the principal
 13 display panel of food packages and commonly referred to as “front-of-pack”
 14 labeling. The use of front-of-pack nutrition symbols and other claims has grown
 15 tremendously in recent years, and it is clear to me as a working mother that such
 16 information can be helpful to busy shoppers who are often pressed for time in
 17 making their food selections.

18 As we move forward in those areas, I must note, however, that there is one area in
 19 which more progress is needed. As you will recall, we recently expressed
 20 concern, in a “Dear Industry” letter, about the number and variety of label claims
 21 that may not help consumers distinguish healthy food choices from less healthy
 22 ones and, indeed, may be false or misleading.

23 At that time, we urged food manufacturers to examine their product labels in the
 24 context of the provisions of the Federal Food, Drug, and Cosmetic Act that
 25 prohibit false or misleading claims and restrict nutrient content claims to those
 26 defined in FDA regulations. As a result, some manufacturers have revised their
 27 labels to bring them into line with the goals of the Nutrition Labeling and
 28 Education Act of 1990. Unfortunately, however, we continue to see products
 marketed with labeling that violates established labeling standards.

29 To address these concerns, FDA is notifying a number of manufacturers that their
 30 labels are in violation of the law and subject to legal proceedings to remove
 31 misbranded products from the marketplace. While the warning letters that convey
 32 our regulatory intentions do not attempt to cover all products with violative labels,
 33 they do cover a range of concerns about how false or misleading labels can
 34 undermine the intention of Congress to provide consumers with labeling
 35 information that enables consumers to make informed and healthy food choices.
 36 For example:

- 37 • Nutrient content claims that FDA has authorized for use on foods for
 38 adults are not permitted on foods for children under two. Such claims are
 39 highly inappropriate when they appear on food for infants and toddlers
 40 because it is well known that the nutritional needs of the very young are
 41 different than those of adults.
- 42 • Claims that a product is free of trans fats, which imply that the product is a
 43 better choice than products without the claim, can be misleading when a
 44 product is high in saturated fat, and especially so when the claim is not
 45 accompanied by the required statement referring consumers to the more
 46 complete information on the Nutrition Facts panel.

- 1 Products that claim to treat or mitigate disease are considered to be drugs
2 and must meet the regulatory requirements for drugs, including the
3 requirement to prove that the product is safe and effective for its intended
use.
- 4 Misleading “healthy” claims continue to appear on foods that do not meet
the long- and well-established definition for use of that term.
- 5 Juice products that mislead consumers into believing they consist entirely
6 of a single juice are still on the market. Despite numerous admonitions
7 from FDA over the years, we continue to see juice blends being
inaccurately labeled as single-juice products.

8 These examples and others that are cited in our warning letters are not indicative
9 of the labeling practices of the food industry as a whole. In my conversations
10 with industry leaders, I sense a strong desire within the industry for a level
11 playing field and a commitment to producing safe, healthy products. That
reinforces my belief that FDA should provide as clear and consistent guidance as
possible about food labeling claims and nutrition information in general, and
specifically about how the growing use of front-of-pack calorie and nutrient
information can best help consumers construct healthy diets.

12 I will close with the hope that these warning letters will give food manufacturers
13 further clarification about what is expected of them as they review their current
14 labeling. I am confident that our past cooperative efforts on nutrition information
15 and claims in food labeling will continue as we jointly develop a practical,
science-based front-of-pack regime that we can all use to help consumers choose
healthier foods and healthier diets.

16 *See Exhibit 7.*

17 42. Defendant has continued to mislabel its Purchased Products and the Class Products
despite the express admonition not to do so contained in the Open Letter.

18 THE PURCHASED PRODUCTS AND THEIR SHERMAN LAW VIOLATIONS

19 A. Defendant Makes Unlawful and Misleading “All Natural” Claims

20 43. The following Purchased Products contain an “All Natural” claim:

21 Lay’s Honey Barbecue Potato Chips
Kettle Cooked Mesquite BBQ Potato Chips

22 44. The following products are Defendant’s products which contain the same “Made
23 with Natural Ingredients” or “All Natural” label statement as Lay’s Honey Barbecue Potato Chips
24 and Kettle Cooked Mesquite BBQ Potato Chips and are unlawful and misleading:

25 Lay’s Barbecue Flavored Potato Chips
Lay’s Sour Cream And Onion Potato Chips
Lay’s Cajun Herb & Spice Flavored Potato Chips
Lay’s Cheddar & Sour Cream Flavored Potato Chips
Lay’s Chile Limon Flavored Potato Chips

1 Lay's Dill Pickle Flavored Potato Chips
 2 Lay's Tangy Carolina BBQ Flavored Potato Chips
 3 Lay's Garden Tomato & Basil Flavored Potato Chips
 4 Lay's Sweet Southern Heat Flavored Potato Chips
 5 Lay's Classic Blt Potato Chips
 6 Lay's Flamin Hot Potato Chips
 7 Lay's Kettle Cooked Original Potato Chips
 8 Lay's Kettle Cooked Applewood Smoked BBQ Flavored Potato Chips
 9 Lay's Kettle Cooked Sea Salt & Vinegar Flavored Potato Chips
 10 Lay's Kettle Cooked Sea Salt & Cracked Pepper Flavored Potato Chips
 11 Lay's Kettle Cooked Sharp Cheddar Flavored Potato Chips
 12 Lay's Kettle Cooked Jalapeno Flavored Potato Chips
 13 Lay's Kettle Cooked Maui Onion Flavored Potato Chips
 14 Lay's Kettle Cooked Reduced Fat Original Potato Chips
 15 Lay's Kettle Cooked Parmesan And Sun Dried Tomato Potato Chips
 16 Lay's Kettle Cooked Harvest Ranch Potato Chips
 17 Lay's Kettle Cooked Spicy Cayenne Potato Chips
 18 Lay's Kettle Cooked Creamy Mediterranean Herb Potato Chips
 19 Lay's Limon Potato Chips
 20 Lay's Balsamic Sweet Onion Potato Chips
 21 Lay's Chipotle Ranch Potato Chips
 22 Lay's Creamy Garden Ranch Potato Chips
 23 Lay's Salt And Vinegar Potato Chips
 24 Lay's Honey Mustard Potato Chips
 25 Lay's Wavy Au Gratin Potato Chips
 26 Lay's Wavy Ranch Potato Chips
 27 Lay's Wavy Hickory Barbecue Potato Chips
 28 Miss Vickie's Jalapeno Kettle Cooked Flavored Potato Chips
 29 Miss Vickie's Sea Salt & Cracked Pepper Flavored Potato Chips
 30 Miss Vickie's Sea Salt & Vinegar Kettle Cooked Flavored Potato Chips
 31 Miss Vickie's Smokehouse BBQ Kettle Cooked Flavored Potato Chips
 32 Cheetos Simply Natural Puffs White Cheddar Cheese Flavored Snacks
 33 Tostitos Artisan Recipes Baked Three Cheese Queso Flavored Tortilla Chips
 34 Tostitos Artisan Recipes Grilled Red Pepper & Tomato Salsa Flavored Tortilla
 35 Chips
 36 Tostitos Artisan Recipes Roasted Garlic & Black Bean Tortilla Chips
 37 Tostitos Artisan Recipes Toasted Southwestern Spices Tortilla Chips
 38 Tostitos Hint Of Lime Flavored Tortilla Chips
 39 Tostitos Hint Of Pepper Jack Flavored Tortilla Chips
 40 Tostitos Hint Of Jalapeno Flavored Tortilla Chips
 41 Sunchips Original Multigrain Snacks
 42 Sunchips French Onion Flavored Multigrain Snacks
 43 Sunchips Garden Salsa Flavored Multigrain Snacks
 44 Sunchips Harvest Cheddar Flavored Multigrain Snacks
 45 Sunchips Sweet & Spicy BBQ Flavored Multigrain Snacks

46 Exhibit 8 is a compilation of the labels of the above referenced products which contain the same
 47 or similar "Made with All Natural Ingredients" or "All Natural" stamp as Lay's Honey Barbecue
 48 Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips.²

49
 50 ² Defendant also listed the following products: as "All Natural" products on its website,
 51 www.fritolaw.com/your-health/naturally-delicious. A copy of this page is attached as Exhibit 12,
 52 as the page is no longer available.

1 45. The following unlawful and misleading language appears on the label of Lay's
 2 Honey Barbecue Potato Chips and Kettle Cooked BBQ Potato Chips and Defendant's products
 3 listed in paragraph 44: "**Made with All Natural Ingredients**" or "**All Natural.**"

4 46. Plaintiff Campen reasonably relied on this label representation when making his
 5 purchase decisions and was misled by this representation as described below. Plaintiff Campen
 6 would not have purchased Lay's Honey Barbecue Potato Chips and Kettle Cooked Mesquite
 7 BBQ Potato Chips had he known the truth about Lay's Honey Barbecue Potato Chips and Kettle
 8 Cooked Mesquite BBQ Potato Chips, i.e. that the products were not truly " made with all natural
 9 ingredients" or "all natural". Plaintiff Campen had other food alternatives that satisfied such
 10 standards and Plaintiff Campen also had cheaper alternatives. Reasonable consumers would have
 11 been misled in the same manner as Plaintiff Campen.

12 47. Also, Plaintiff Campen reasonably relied on the fact that Lay's Honey Barbecue
 13 Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips were not misbranded under the
 14 Sherman Law and were therefore legal to buy and possess. Plaintiff Campen would not have
 15 purchased Lay's Honey Barbecue Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips
 16 had they known it was illegal to purchase and possess these products.

17 48. In its rule-making and warning letters to manufacturers, the FDA has repeatedly
 18 stated its policy to restrict the use of the term "natural" in connection with added color, synthetic
 19 substances and flavors as provided in 21 C.F.R. § 101.22.

20 49. The FDA has also repeatedly affirmed its policy regarding the use of the term
 21 "natural" as meaning that nothing artificial or synthetic (including all color additives regardless of
 22 source) has been included in, or has been added to, a food that would not normally be expected to
 23 be in the food.

24 50. For example, 21 C.F.R. § 70.3(f) makes clear that "where a food substance such as
 25 beet juice is deliberately used as a color, as in pink lemonade, it is a color additive." Similarly,
 26 any coloring or preservative can preclude the use of the term "natural" even if the coloring or
 27 preservative is derived from natural sources. Further, the FDA distinguishes between natural and
 28 artificial flavors in 21 C.F.R. § 101.22.

1 51. Defendant's "all natural" labeling practices violate FDA Compliance Guide CPG
 2 Sec. 587.100, which states: [t]he use of the words "food color added," "natural color," or similar
 3 words containing the term "food" or "natural" may be erroneously interpreted to mean the color is
 4 a naturally occurring constituent in the food. Since all added colors result in an artificially
 5 colored food, we would object to the declaration of any added color as "food" or "natural."

6 52. Likewise, California Health & Safety Code § 110740 prohibits the use of artificial
 7 flavoring, artificial coloring and chemical preservatives unless those ingredients are adequately
 8 disclosed on the labeling.

9 53. The FDA has sent out numerous warning letters concerning this issue. *See e.g.*,
 10 Exhibit 9 (August 16, 2001 FDA warning letter to Oak Tree Farm Dairy because there was citric
 11 acid in its all natural iced tea); Exhibit 10 (August 29, 2001 FDA warning letter to Hirzel Canning
 12 Company because there was citric acid or calcium chloride in its all natural tomato products);
 13 Exhibit 11 (August 2, 2001 FDA warning letter to GMP Manufacturing, Inc. stating: "[t]he
 14 products, Cytomax Exercise and Recovery Drink (Peachy Keen flavor) and Cytomax Lite
 15 (Lemon Iced Tea Flavor) are misbranded because they contain colors but are labeled using the
 16 term "no artificial colors."). Defendant is aware of these FDA warning letters.

17 54. Defendant promoted such falsely labeled and misrepresented products with "the
 18 largest integrated marketing campaign in the history of the company [Frito-Lay]." This campaign
 19 included television advertising print advertising, in-store promotions, digital and social mediums
 20 and packaging. Defendant also promoted its "All Natural" and "Made with All Natural
 21 Ingredients" campaign on its website, www.fritolaw.com/your-health/naturally-delicious.³
 22 Moreover, advertising, marketing and packaging was designed to drive consumers to online
 23 content and product labels invited consumers to go to these online sources of information.
 24 Plaintiff Campen was exposed to this campaign and as discussed below misled by specific
 25 misrepresentations on the labels made by Defendant's as part of this campaign on which he
 26 relied. In particular, he was misled by Defendant's false "All Natural" and "Made with All
 27

28 ³ A copy of this page is attached as Exhibit 12, as the page is no longer available on Defendant's
 website.

1 Natural Ingredients" claims on the product labels that were the focus of this unprecedented
 2 campaign.

3 55. As part of this campaign, Defendant began placing seals or emblems on their food
 4 product's packaging that indicated that these products were "Made With All Natural Ingredients,"
 5 "All Natural" and that the products contained "No MSG" and "No Preservatives" and "No
 6 Artificial Flavors." Defendant called this seal or emblem its "all natural stamp" and told
 7 consumers it was designed so that consumers could "easily identify our products made with all
 8 natural ingredients" and help them "find all natural Frito-Lay products." This seal or emblem was
 9 bolstered by other similar statements elsewhere on the labels. Frito Lay further represented to
 10 consumers that [t]he products made with all natural ingredients do not contain any artificial
 11 ingredients or synthetic ingredients, and they do not contain any artificial flavors or artificial
 12 preservatives, or ingredients such as monosodium glutamate (MSG)." These statements and
 13 representations were false as the Lay's Honey Barbecue Potato Chips contained ingredients that
 14 were not "all natural" particularly yeast extract, caramel color and citric acid, and the Lay's Kettle
 15 Cooked Mesquite BBQ Potato Chips contained ingredients that were not "all natural" particularly
 16 maltodextrin, yeast extract and citric acid. Similarly, the products listed in paragraph 42 also
 17 contain ingredients that are not "all natural" or "made with all natural ingredients." In addition,
 18 the Defendant further obscured the unnatural nature of its ingredients by failing to disclose the
 19 function of its ingredients as required by 21 C.F.R. §101.22 and thus failed to reveal that
 20 ingredients like citric acid were functioning as artificial flavors, preservatives or added colors.

21 56. Defendant has unlawfully labeled (i) Lay's Honey Barbecue Potato Chips, (ii),
 22 Lay's Kettle Cooked Mesquite BBQ Potato Chips and (iii) the similarly labeled products
 23 identified in paragraph 44 as "made with all natural ingredients" or "all natural" when they
 24 actually contain artificial ingredients and flavorings, artificial coloring and chemical
 25 preservatives. Consumers are thus misled into purchasing such products with synthetic unnatural
 26 ingredients that are not "all natural" as falsely represented on their labeling. Defendant's
 27 products in this respect are misbranded under federal and California law.
 28

1 57. Plaintiff Campen bought Lay's Honey Barbecue Potato Chips which bore
 2 Defendant's "All Natural" stamp and Lay's Kettle Cooked Mesquite BBQ Potato Chips which
 3 bore Defendant's "All Natural Ingredients" stamp which Defendant falsely represented as being
 4 "All Natural." These products were falsely labeled and misbranded because contrary to the
 5 various false representations that they were "All Natural" they contained various ingredients such
 6 as artificial ingredients and flavorings, artificial coloring and chemical preservatives. For
 7 example, Lay's Honey Barbecue Potato Chips contained ingredients that were not "all natural"
 8 such as caramel color and citric acid, and the Lay's Kettle Cooked Mesquite BBQ Potato Chips
 9 contained ingredients that were not "all natural" such as maltodextrin and citric acid. Similarly,
 10 the products listed in paragraph 42 also contain ingredients that are not "all natural" or "made
 11 with all natural ingredients."

12 58. For these reasons, Defendant's "all natural" labels are (i) false and misleading and
 13 in violation of identical California and federal law, and (ii) the products at issue are misbranded
 14 as a matter of law. Therefore, these products are misbranded as a matter of California and federal
 15 law and cannot be sold or held and thus are legally worthless and have no economic value.

16 59. Defendant's claims in this respect are false and misleading and Lay's Honey
 17 Barbecue Potato Chips, Lay's Kettle Cooked Mesquite Barbecue Potato Chips and the similarly
 18 labeled products identified in paragraph 44 are in this respect misbranded under identical
 19 California and federal laws. Misbranded products cannot be legally sold and have no economic
 20 value and are legally worthless. Plaintiff and members of the Class who purchased Lay's Honey
 21 Barbecue Potato Chips, Lay's Kettle Cooked Mesquite Barbecue Potato Chips and the similarly
 22 labeled products identified in paragraph 44 paid an unwarranted premium for these products.

23 60. Plaintiff and members of the Class would not have purchased Lay's Honey
 24 Barbecue Potato Chips, Lay's Kettle Cooked Mesquite Barbecue Potato Chips and the similarly
 25 labeled products identified in paragraph 44 if they had known they were illegal to sell or possess.

26 **B. Defendant Makes Unlawful and Misleading "No MSG" Claims**

27 61. The following Purchased Products were falsely represented by the Defendant as
 28 having "No MSG":

1 Lay's Honey Barbecue Potato Chips
 2 Kettle Cooked BBQ Potato Chips

3 62. The following products are Defendant's products which contain the same "All
 4 Natural" stamp and the same false statement that the products contain "No MSG" as the Lay's
 5 Honey Barbecue Chips, Kettle Cooked BBQ Potato Chips and are unlawful and misleading:

6 Lay's Barbecue Flavored Potato Chips
 7 Lay's Cajun Herb & Spice Flavored Potato Chips
 8 Lay's Cheddar & Sour Cream Flavored Potato Chips
 9 Lay's Chile Limon Flavored Potato Chips
 10 Lay's Dill Pickle Flavored Potato Chips
 11 Lay's Garden Tomato & Basil Flavored Potato Chips
 12 Lay's Honey BBQ Flavored Potato Chips
 13 Lay's Kettle Cooked Applewood Smoked BBQ Flavored Potato Chips
 14 Lay's Kettle Cooked Jalapeno Flavored Potato Chips
 15 Lay's Kettle Cooked Maui Onion Flavored Potato Chips
 16 Lay's Kettle Cooked Sea Salt & Cracked Pepper Flavored Potato Chips
 17 Lay's Kettle Cooked Sea Salt & Vinegar Flavored Potato Chips
 18 Lay's Kettle Cooked Sharp Cheddar Flavored Potato Chips
 19 Lay's Sour Cream & Onion Flavored Potato Chips
 20 Lay's Sweet Southern Heat Flavored Potato Chips
 21 Lay's Tangy Carolina BBQ Flavored Potato Chips
 22 Lay's Wavy Augratin Potato Chips
 23 Lay's Wavy Hickory Barbecue Potato Chips
 24 Lay's Wavy Ranch Potato Chips
 25 Miss Vickie's Jalapeno Kettle Cooked Flavored Potato Chips
 26 Miss Vickie's Sea Salt & Cracked Pepper Flavored Potato Chips
 27 Miss Vickie's Sea Salt & Vinegar Kettle Cooked Flavored Potato Chips
 28 Miss Vickie's Smokehouse BBQ Kettle Cooked Flavored Potato Chips
 Cheetos Simply Natural Puffs White Cheddar Cheese Flavored Snacks
 Tostitos Artisan Recipes Baked Three Cheese Queso Flavored Tortilla Chips
 Tostitos Artisan Recipes Grilled Red Pepper & Tomato Salsa Flavored Tortilla
 Chips
 Tostitos Artisan Recipes Roasted Garlic & Black Bean Tortilla Chips
 Tostitos Artisan Recipes Toasted Southwestern Spices Tortilla Chips
 Tostitos Hint Of Lime Flavored Tortilla Chips
 Tostitos Hint Of Pepper Jack Flavored Tortilla Chips
 Tostitos Hint Of Jalapeno Flavored Tortilla Chips
 Sunchips French Onion Flavored Multigrain Snacks
 Sunchips Garden Salsa Flavored Multigrain Snacks
 Sunchips Harvest Cheddar Flavored Multigrain Snacks
 Sunchips Sweet & Spicy BBQ Flavored Multigrain Snacks

29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 810
 811
 812
 813
 814
 815
 816
 817
 818
 819
 820
 821
 822
 823
 824
 825
 826
 827
 828
 829
 830
 831
 832
 833
 834
 835
 836
 837
 838
 839
 840
 841
 842
 843
 844
 845
 846
 847
 848
 849
 850
 851
 852
 853
 854
 855
 856
 857
 858
 859
 860
 861
 862
 863
 864
 865
 866
 867
 868
 869
 870
 871
 872
 873
 874
 875
 876
 877
 878
 879
 880
 881
 882
 883
 884
 885
 886
 887
 888
 889
 890
 891
 892
 893
 894
 895
 896
 897
 898
 899
 900
 901
 902
 903
 904
 905
 906
 907
 908
 909
 910
 911
 912
 913
 914
 915
 916
 917
 918
 919
 920
 921
 922
 923
 924
 925
 926
 927
 928
 929
 930
 931
 932
 933
 934
 935
 936
 937
 938
 939
 940
 941
 942
 943
 944
 945
 946
 947
 948
 949
 950
 951
 952
 953
 954
 955
 956
 957
 958
 959
 960
 961
 962
 963
 964
 965
 966
 967
 968
 969
 970
 971
 972
 973
 974
 975
 976
 977
 978
 979
 980
 981
 982
 983
 984
 985
 986
 987
 988
 989
 990
 991
 992
 993
 994
 995
 996
 997
 998
 999
 1000
 1001
 1002
 1003
 1004
 1005
 1006
 1007
 1008
 1009
 10010
 10011
 10012
 10013
 10014
 10015
 10016
 10017
 10018
 10019
 10020
 10021
 10022
 10023
 10024
 10025
 10026
 10027
 10028
 10029
 10030
 10031
 10032
 10033
 10034
 10035
 10036
 10037
 10038
 10039
 10040
 10041
 10042
 10043
 10044
 10045
 10046
 10047
 10048
 10049
 10050
 10051
 10052
 10053
 10054
 10055
 10056
 10057
 10058
 10059
 10060
 10061
 10062
 10063
 10064
 10065
 10066
 10067
 10068
 10069
 10070
 10071
 10072
 10073
 10074
 10075
 10076
 10077
 10078
 10079
 10080
 10081
 10082
 10083
 10084
 10085
 10086
 10087
 10088
 10089
 10090
 10091
 10092
 10093
 10094
 10095
 10096
 10097
 10098
 10099
 100100
 100101
 100102
 100103
 100104
 100105
 100106
 100107
 100108
 100109
 100110
 100111
 100112
 100113
 100114
 100115
 100116
 100117
 100118
 100119
 100120
 100121
 100122
 100123
 100124
 100125
 100126
 100127
 100128
 100129
 100130
 100131
 100132
 100133
 100134
 100135
 100136
 100137
 100138
 100139
 100140
 100141
 100142
 100143
 100144
 100145
 100146
 100147
 100148
 100149
 100150
 100151
 100152
 100153
 100154
 100155
 100156
 100157
 100158
 100159
 100160
 100161
 100162
 100163
 100164
 100165
 100166
 100167
 100168
 100169
 100170
 100171
 100172
 100173
 100174
 100175
 100176
 100177
 100178
 100179
 100180
 100181
 100182
 100183
 100184
 100185
 100186
 100187
 100188
 100189
 100190
 100191
 100192
 100193
 100194
 100195
 100196
 100197
 100198
 100199
 100200
 100201
 100202
 100203
 100204
 100205
 100206
 100207
 100208
 100209
 100210
 100211
 100212
 100213
 100214
 100215
 100216
 100217
 100218
 100219
 100220
 100221
 100222
 100223
 100224
 100225
 100226
 100227
 100228
 100229
 100230
 100231
 100232
 100233
 100234
 100235
 100236
 100237
 100238
 100239
 100240
 100241
 100242
 100243
 100244
 100245
 100246
 100247
 100248
 100249
 100250
 100251
 100252
 100253
 100254
 100255
 100256
 100257
 100258
 100259
 100260
 100261
 100262
 100263
 100264
 100265
 100266
 100267
 100268
 100269
 100270
 100271
 100272
 100273
 100274
 100275
 100276
 100277
 100278
 100279
 100280
 100281
 100282
 100283
 100284
 100285
 100286
 100287
 100288
 100289
 100290
 100291
 100292
 100293
 100294
 100295
 100296
 100297
 100298
 100299
 100300
 100301
 100302
 100303
 100304
 100305
 100306
 100307
 100308
 100309
 100310
 100311
 100312
 100313
 100314
 100315
 100316
 100317
 100318
 100319
 100320
 100321
 100322
 100323
 100324
 100325
 100326
 100327
 100328
 100329
 100330
 100331
 100332
 100333
 100334
 100335
 100336
 100337
 100338
 100339
 100340
 100341
 100342
 100343
 100344
 100345
 100346
 100347
 100348
 100349
 100350
 100351
 100352
 100353
 100354
 100355
 100356
 100357
 100358
 100359
 100360
 100361
 100362
 100363
 100364
 100365
 100366
 100367
 100368
 100369
 100370
 100371
 100372
 100373
 100374
 100375
 100376
 100377
 100378
 100379
 100380
 100381
 100382
 100383
 100384
 100385
 100386

1 63. The Lay's Kettle Cooked Mesquite BBQ Potato Chips and the products listed in
 2 paragraph 62 expressly stated that the product contained "No MSG." *See* Exhibit 3. In addition,
 3 the Lay's Honey Barbecue Potato Chips' label bore Defendant's "Made with All Natural
 4 Ingredients" stamp, which as discussed below, means "No MSG" as defined by Defendant. *See*
 5 Exhibit 2.

6 64. Plaintiff Campen reasonably relied on this label representation when making his
 7 purchase decision and was misled by this representation as described below. Plaintiff Campen
 8 would not have purchased Lay's Honey Barbecue Potato Chips and Kettle Cooked Mesquite
 9 BBQ Potato Chips had he known the truth about these products, i.e. that the "No MSG" claim
 10 was false. Plaintiff Campen had other food alternatives that satisfied such standards and Plaintiff
 11 Campen also had cheaper alternatives. Reasonable consumers would have been misled in the
 12 same manner as Plaintiff Campen.

13 65. Also, Plaintiff Campen reasonably relied on the fact that Lay's Honey Barbecue
 14 Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips were not misbranded under the
 15 Sherman Law and were therefore legal to buy and possess. Plaintiff Campen would not have
 16 purchased Lay's Honey Barbecue Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips
 17 had he known it was illegal to purchase and possess the products.

18 66. Defendant recognized that consumers were increasingly seeking to avoid
 19 monosodium glutamate ("MSG") and thus were looking for "No MSG" food options. According
 20 to Defendant "[s]ome people report sensitivity to MSG and prefer to avoid foods containing
 21 MSG."

22 67. Rather than reformulate all of their food products so that they did not contain the
 23 MSG, Defendant knew consumers were seeking to avoid, Defendant simply mislabeled a number
 24

25 Flavored Potato Chips; LAY'S® Sriracha Flavored Potato Chips; LAY'S® FLAMIN' HOT®
 26 Flavored Potato Chips; LAY'S® TAPATIO® Limon Flavored Potato Chips; LAY'S® Wavy
 27 Roasted Garlic & Sea Salt Flavored Potato Chips; BAKED! LAY'S® Barbecue Flavored Potato
 28 Crisps; BAKED! LAY'S® Parmesan & Tuscan Herb Flavored Potato Crisps; DORITOS®
 DINAMITA® Chipotle Crema Flavored Tortilla Chips; MAUI STYLE® Salt & Vinegar
 Flavored Potato Chips; CHESTER'S® Butter Flavored Puffcorn Snacks and CHESTER'S®
 Cheese Flavored Puffcorn Snacks. <http://www.fritolay.com/your-health/us-products-not-containing-msg.html>. A copy of this page is attached as Exhibit 14.

1 of their MSG laden products and placed false "No MSG" representations on these products'
 2 labels and labeling and falsely depicted these products in their advertising and marketing
 3 materials and on their websites as being free of MSG.

4 68. Defendant was correct in its statement that some people are sensitive or intolerant
 5 of MSG and that some consumers seek to avoid the chemical. The FDA's Center for Food Safety
 6 and Applied Nutrition has received hundreds of reports of MSG related adverse reactions and
 7 complaints. A study commissioned by the FDA reported that a percentage of the population may
 8 react to MSG and develop MSG complex, a condition characterized by one or more of the
 9 following symptoms: burning sensation in the back of the neck, forearms, and chest; numbness in
 10 the back of the neck radiating to the arms and back; tingling, warmth and weakness in the face,
 11 temples, upper back, neck and arms; facial pressure or tightness; chest pain; headache; nausea;
 12 rapid heartbeat; bronchospasm (difficulty breathing) in MSG intolerant people with asthma;
 13 drowsiness and weakness. *See* FDA Backgrounder (August 31, 1995), attached as Exhibit 15.

14 69. According to the FDA:

15 A food that bears a false or misleading claim about the absence of MSG is
 16 misbranded under section 403(a) of the act. FDA has repeatedly advised
 17 consumers and industry that it considers such claims as "No MSG" and "No
 18 added MSG" to be misleading when they are used on the labels of foods made
 19 with ingredients that contain substantial levels of free glutamate (Refs. 25, 26, and
 20 27). FDA has authority to take action against such misbranded foods under
 21 existing law, but because of the proliferation of such claims on products made
 22 with ingredients that contain substantial levels of free glutamate, the agency
 23 believes that formal criteria would be useful to define more precisely the
 24 circumstances under which labels bearing claims about the absence of MSG are
 25 misleading. While such criteria are being developed, however, FDA will continue
 26 to take regulatory action as appropriate against false or patently misleading claims
 27 about the absence of MSG, such as "No MSG" claims on products made with
 28 MSG-containing ingredients, hydrolyzed proteins, or autolyzed yeast extracts.
 Food Labeling; Declaration of Free Glutamate in Food, 61 FR 48102 (September
 12, 1996).

20 70. The FDA reiterated its position in November 2012 stating:

21 MSG occurs naturally in ingredients such as hydrolyzed vegetable protein,
 22 autolyzed yeast, hydrolyzed yeast, yeast extract, soy extracts, and protein isolate,
 23 as well as in tomatoes and cheeses. While FDA requires that these products be
 24 listed on the ingredient panel, the agency does not require the label to also specify
 25 that they naturally contain MSG. **However, foods with any ingredient that**
 26 **naturally contains MSG cannot claim "No MSG" or "No added MSG" on**
 27 **their packaging.** MSG also cannot be listed as "spices and flavoring."

1 http://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/ucm3
 2 28728.htm (emphasis added) (attached as Exhibit 16).

3 71. The FDA also noted that there were numerous books and media reports reporting
 4 “widespread and sometimes life-threatening adverse reactions to MSG” and claims that “even
 5 small amounts of manufactured glutamates may cause adverse reactions.” FDA Backgrounder
 6 (August 31, 1995) (attached as Exhibit 15).

7 72. In light of these facts, many consumers choose to avoid or at least limit MSG in
 8 their diet. Plaintiff Campen was such a consumer. Plaintiff Campen was misled by Defendant into
 9 purchasing Lay’s Honey Barbecue Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips
 10 containing MSG that were misrepresented as having “No MSG” by Defendant.

11 73. The FDA has indicated that “consumers frequently use the term MSG to mean “all
 12 free glutamate” and therefore “[f]or this reason, FDA considers foods who labels say ‘No MSG’
 13 or ‘No Added MSG’ to be misleading if the food contains ingredients that are sources of free
 14 glutamates, such as hydrolyzed protein.” FDA Backgrounder (August 31, 1995) (attached as
 15 Exhibit 15). Despite this guidance, Defendant engaged in exactly the practice the FDA warned
 16 was “misleading” to consumers. In doing so Defendant misled the Plaintiff Campen and members
 17 of the Class who reasonably relied on Defendant’s false and misleading “No MSG” claims.

18 74. As discussed above, Defendant promoted such falsely labeled and misrepresented
 19 products with “the largest integrated marketing campaign in the history of the company [Frito-
 20 Lay].” This campaign included television advertising print advertising, in-store promotions,
 21 digital and social mediums and packaging. Defendant also promoted its “No MSG” campaign on
 22 its website, <http://www.fritolay.com/your-health/us-products-not-containing-msg.html>.⁵
 23 Moreover, advertising, marketing and packaging was designed to drive consumers to online
 24 content and product labels invited consumers to go to these online sources of information.
 25 Plaintiff Campen was exposed to this campaign and as discussed below misled by specific
 26 misrepresentations on the labels made by Defendant as part of this campaign on which he relied.
 27 In particular, he was misled by Defendant’s false “No MSG” claims on the product labels that

28 ⁵ See attached Exhibit 14. As discussed below, Defendant’s website is also considered “labeling.”

1 were the focus of this unprecedented campaign, including Lay's Honey Barbecue Potato Chips
 2 and Kettle Cooked Mesquite BBQ Potato Chips.

3 75. As part of this campaign, Defendant began placing seals or emblems on their food
 4 product's packaging that indicated that these products were "Made With All Natural Ingredients"
 5 and that the products contained "No MSG" and "No Preservatives" and "No Artificial Flavors."
 6 Defendant called this seal or emblem its "all natural stamp" and told consumers it was designed
 7 so that consumers could "easily identify our products made with all natural ingredients" and help
 8 them "find all natural Frito-Lay products." This seal or emblem was bolstered by other similar
 9 statements elsewhere on the labels. Frito Lay further represented to consumers that [t]he products
 10 made with all natural ingredients do not contain any artificial ingredients or synthetic ingredients,
 11 and they do not contain any artificial flavors or artificial preservatives, or ingredients such as
 12 monosodium glutamate (MSG)." <http://www.fritolay.com/about-us/press-release-20101228.html>
 13 (attached as Exhibit 17). These statements and representations were false as Lay's Honey
 14 Barbecue Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips and the products listed in
 15 paragraph 62 contained MSG.

16 76. Defendant also promised that any Frito-Lay products containing MSG will list
 17 MSG in the ingredient statement. This was false as Defendant failed to disclose the presence of
 18 MSG in their products or their products' ingredient lists.

19 77. Plaintiff Campen bought Lay's Honey Barbecue Potato Chips which bore
 20 Defendant's "All Natural" stamp and Lay's Kettle Cooked Mesquite BBQ Potato Chips which
 21 bore Defendant's "All Natural Ingredients" stamp which Defendant falsely represented as having
 22 "No MSG." These products were falsely labeled and misbranded because contrary to the various
 23 false representations that they contained "No MSG" they contained various ingredients such as
 24 yeast extract that are sources of MSG. For example, Lay's Honey Barbecue Potato Chips and
 25 Kettle Cooked Mesquite BBQ Potato Chips purchased by Plaintiff Campen were falsely
 26 represented as having "NO MSG" but in fact each contained yeast extract, a source of MSG.

27 78. A reasonable consumer would expect that when Defendant labels its products with
 28 a "No MSG" claim the product and the product's ingredients will not contain MSG or free

1 glutamates and would not be using the term “No MSG” in way deemed “misleading” by the FDA.
 2 A reasonable consumer would also expect that when Defendant labels its products with a “No
 3 MSG” claim the product and the product ingredients have no MSG under the common use of that
 4 word. A reasonable consumer would understand that “NO MSG” products do not contain MSG
 5 or free glutamates.

6 79. Consumers such as Plaintiff Campen are thus misled into purchasing Defendant’s
 7 purportedly “No MSG” products that actually contain MSG or free glutamates and that are not
 8 MSG free as falsely represented on their labeling. Defendant’s Lay’s Honey Barbecue Potato
 9 Chips and Kettle Cooked Mesquite BBQ Potato Chips and the products listed in paragraph 62 in
 10 this respect are misbranded under federal and California law and violate Cal. Health & Safety
 11 Code § 110660.

12 80. Plaintiff Campen relied on Defendant’s “No MSG” claims when making his
 13 purchase decisions during the Class Period and was misled because he erroneously believed the
 14 express misrepresentations that Defendant’s Lay’s Honey Barbecue Potato Chips and Kettle
 15 Cooked Mesquite BBQ Potato Chips he was purchasing were devoid of MSG and free glutamates
 16 as represented. Purchasing “No MSG” products was important to Plaintiff Campen in trying to
 17 buy “healthy” food products. Plaintiff Campen would not have purchased Lay’s Honey Barbecue
 18 Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips had he known that Defendant’s
 19 products contained MSG or glutamates.

20 81. For these reasons, Defendant’s “No MSG” claims are false and misleading and in
 21 violation of identical California and federal law, and the products at issue are misbranded as a
 22 matter of law. Therefore, Defendant’s Lay’s Honey Barbecue Potato Chips and Kettle Cooked
 23 Mesquite BBQ Potato Chips and the products listed in paragraph 62 are misbranded as a matter of
 24 California and federal law and cannot be sold or held and thus are legally worthless and have no
 25 economic value. Plaintiff Campen and members of the Class who purchased Lay’s Honey
 26 Barbecue Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips and the products listed in
 27 paragraph 62 paid an unwarranted premium for these products.

1 82. Plaintiff Campen and members of the Class would not have purchased Lay's
 2 Honey Barbecue Potato Chips and Kettle Cooked Mesquite BBQ Potato Chips and the products
 3 listed in paragraph 62 if they had known the products were illegal to sell or possess.

4 **E. Defendant's Makes Unlawful and Misleading "0g Trans Fat" Claim**

5 83. The following Purchased Products contain a unlawful and misleading "0g Trans
 6 Fat" claim:

7 Lay's Classic Potato Chips
 8 Lay's Honey Barbecue Potato Chips
 9 Lay's Kettle Cooked Mesquite BBQ
 Cheetos Puffs
 Fritos Original Corn Chips

10 84. The following products are Defendant's products which contain the same "0g
 11 Trans Fat" label statement as the above referenced Purchased Products and are unlawful and
 12 misleading:

13 Lay's Barbecue Flavored Potato Chips
 14 Lay's Sour Cream And Onion Potato Chips
 Lay's Cheddar & Sour Cream Flavored Potato Chips
 Lay's Chile Limon Flavored Potato Chips
 Lay's Dill Pickle Flavored Potato Chips
 Lay's Sweet Southern Heat Flavored Potato Chips
 Lay's Classic Blt Potato Chips
 Lay's Flamin Hot Potato Chips
 Lay's Lightly Salted Potato Chips
 Ruffles Original Potato Chips
 Ruffles Sour Cream & Onion Flavored Potato Chips
 Ruffles Cheddar And Sour Cream Flavored Potato Chips
 Ruffles Ultimate Kickin' Jalapeno Ranch Flavored Potato Chips
 Ruffles Ultimate Sweet & Smokin' BBQ Flavored Potato Chips
 Lay's Kettle Cooked Original Potato Chips
 Lay's Kettle Cooked Applewood Smoked BBQ Flavored Potato Chips
 Lay's Kettle Cooked Sea Salt & Vinegar Flavored Potato Chips
 Lay's Kettle Cooked Sea Salt & Cracked Pepper Flavored Potato Chips
 Lay's Kettle Cooked Sharp Cheddar Flavored Potato Chips
 Lay's Kettle Cooked Jalapeno Flavored Potato Chips
 Lay's Kettle Cooked Maui Onion Flavored Potato Chips
 Lay's Kettle Cooked Reduced Fat Original Potato Chips
 Lay's Kettle Cooked Parmesan And Sun Dried Tomato Potato Chips
 Lay's Kettle Cooked Harvest Ranch Potato Chips
 Lay's Kettle Cooked Spicy Cayenne Potato Chips
 Lay's Kettle Cooked Creamy Mediterranean Herb Potato Chips
 Lay's Limon Potato Chips
 Lay's Salt And Vinegar Potato Chips
 Lay's Wavy Original Potato Chips
 Lay's Wavy Au Gratin Potato Chips
 Lay's Wavy Ranch Potato Chips
 Lay's Wavy Hickory Barbecue Potato Chips

1 Miss Vickie's Simply Sea Salt Kettle Cooked Potato Chips
 2 Miss Vickie's Jalapeno Kettle Cooked Flavored Potato Chips
 3 Miss Vickie's Sea Salt & Cracked Pepper Flavored Potato Chips
 4 Miss Vickie's Sea Salt & Vinegar Kettle Cooked Flavored Potato Chips
 5 Miss Vickie's Smokehouse BBQ Kettle Cooked Flavored Potato Chips
 6 Cheetos Crunchy Cheddar Jalapeno Flavored Snacks
 7 Cheetos Crunchy Cheese Flavored Snacks
 8 Cheetos Crunchy Flamin' Hot Cheese Flavored Snacks
 9 Cheetos Crunchy Flamin' Hot Limon Cheese Flavored Snacks
 10 Cheetos Crunchy Salsa Con Queso Cheese Flavored Snacks
 11 Cheetos Crunchy Xxtra Flamin' Hot Cheese Flavored Snacks
 12 Cheetos Puffs Flamin' Hot Cheese Flavored Snacks
 13 Cheetos Puffs Twisted Cheese Flavored Snacks
 14 Chester's Butter Flavored Puffcorn Snacks
 15 Chester's Cheese Flavored Puffcorn Snacks
 16 Fritos BBQ Flavored Corn Chips
 17 Fritos Chili Cheese Flavored Corn Chips
 18 Fritos Flamin' Hot Flavored Corn Chips
 19 Fritos Flavor Twists Honey BBQ Flavored Corn Chips
 20 Fritos Lightly Salted Corn Chips
 21 Fritos Scoops! Corn Chips

22 Exhibit 18 is a compilation of the labels of the above referenced products which contain the same
 23 or similar “0g Trans Fat” label as Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato
 24 Chips, Lay’s Kettle Cooked Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn
 25 Chips.

26 85. The following unlawful and misleading language appears on the labels of
 27 Defendant’s (i) Lay’s Classic Potato Chips, (ii) Lay’s Honey Barbecue Potato Chips, (iii) Lay’s
 28 Kettle Cooked Mesquite BBQ Potato Chips, (iv) Cheetos Puffs, (v) Fritos Original Corn Chips
 and (vi) the products listed in paragraph 84: **“0g Trans Fat.”**

29 86. Plaintiffs reasonably relied on this label representation in paragraph 83 and based
 30 and justified the decision to purchase Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato
 31 Chips, Lay’s Kettle Cooked Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn
 32 Chips, in substantial part, on this label representation. Also, Plaintiffs reasonably relied on the
 33 fact that Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Lay’s Kettle Cooked
 34 Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn Chips were not misbranded
 35 under the Sherman Law and were therefore legal to buy and possess. Plaintiffs would not have
 36 purchased Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Lay’s Kettle Cooked
 37 Chips, Lay’s Kettle Cooked Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn
 38 Chips, in substantial part, on this label representation. Also, Plaintiffs reasonably relied on the
 39 fact that Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Lay’s Kettle Cooked
 40 Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn Chips were not misbranded
 41 under the Sherman Law and were therefore legal to buy and possess. Plaintiffs would not have
 42 purchased Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Lay’s Kettle Cooked
 43 Chips, Lay’s Kettle Cooked Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn
 44 Chips, in substantial part, on this label representation. Also, Plaintiffs reasonably relied on the
 45 fact that Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Lay’s Kettle Cooked
 46 Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn Chips were not misbranded
 47 under the Sherman Law and were therefore legal to buy and possess. Plaintiffs would not have
 48 purchased Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Lay’s Kettle Cooked
 49 Chips, Lay’s Kettle Cooked Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn
 50 Chips, in substantial part, on this label representation. Also, Plaintiffs reasonably relied on the
 51 fact that Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Lay’s Kettle Cooked
 52 Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn Chips were not misbranded
 53 under the Sherman Law and were therefore legal to buy and possess. Plaintiffs would not have
 54 purchased Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Lay’s Kettle Cooked
 55 Chips, Lay’s Kettle Cooked Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn
 56 Chips, in substantial part, on this label representation. Also, Plaintiffs reasonably relied on the
 57 fact that Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Lay’s Kettle Cooked
 58 Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn Chips were not misbranded
 59 under the Sherman Law and were therefore legal to buy and possess. Plaintiffs would not have

1 Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn Chips had they known it
 2 was illegal to purchase and possess the products.

3 87. Plaintiffs reasonably relied on this label representation when making their
 4 purchase decision and were misled by this “0g Trans Fat” representation as described below.
 5 Plaintiffs would not have purchased Lay’s Classic Potato Chips, Lay’s Honey Barbecue Potato
 6 Chips, Lay’s Kettle Cooked Mesquite BBQ Potato Chips, Cheetos Puffs and Fritos Original Corn
 7 Chips had they known the truth about these products, i.e. that the products failed to only make
 8 positive contributions to Plaintiffs’ diet and did contain one or more nutrients like total fat at
 9 levels in the food that increased the risk of disease or health related condition that is diet related.
 10 Plaintiffs had other food alternatives that satisfied such standards and Plaintiffs also had cheaper
 11 alternatives. Reasonable consumers would have been misled in the same manner as Plaintiffs.

12 88. To appeal to consumer preferences, Defendant has repeatedly made improper
 13 nutrient content claims on products containing disqualifying levels of fat, saturated fat,
 14 cholesterol or sodium. These nutrient content claims were improper because Defendant failed to
 15 include disclosure statements required by law that are designed to inform consumers of the
 16 inherently unhealthy nature of those products in violation of 21 C.F.R. § 101.13(h), which has
 17 been incorporated in California’s Sherman Law.

18 89. 21 C.F.R. § 101.13 (h)(1) provides that:

19 If a food ... contains more than 13.0 g of fat, 4.0 g of saturated fat, 60 milligrams
 20 (mg) of cholesterol, or 480 mg of sodium per reference amount customarily
 21 consumed, per labeled serving, or, for a food with a reference amount customarily
 22 consumed of 30 g or less ... per 50 g ... then that food must bear a statement
 23 disclosing that the nutrient exceeding the specified level is present in the food as
 24 follows: “See nutrition information for __ content” with the blank filled in with
 25 the identity of the nutrient exceeding the specified level, e.g., “See nutrition
 26 information for fat content.”

27 90. 21 C.F.R. § 1.21 establishes that failure to disclose material facts is a violation of
 28 the disclosure rules and is *per se* “misleading.”

29 91. Defendant repeatedly violates these provisions on its which prominently states “0g
 30 Trans Fat” claim on the label despite disqualifying levels of fat that far exceed the 13 gram
 31 disclosure threshold.

1 92. Pursuant to 21 C.F.R. § 101.13(h), Defendant is prohibited from making the
 2 unqualified nutrient claims of “0 grams Trans Fat” or “No Trans Fat” claim on its food products if
 3 its products contain fat in excess of 13 grams, saturated fat in excess of 4 grams, cholesterol in
 4 excess of 60 milligrams, or sodium in excess of 480mg per 50 grams, unless the product also
 5 displays a disclosure statement that informs consumers of the product’s fat, saturated fat and
 6 sodium levels. These regulations are intended to ensure that consumers are not misled into the
 7 erroneous belief that a product that claims, for instance, to be low in trans fat, but actually has
 8 other unhealthy fat levels, is a healthy choice, because of the lack of trans fats.

9 93. Nevertheless, Defendant’s products label states that this product contains “0g
 10 Trans Fat” without such a disclosure even though the products contain fat in excess of 13 grams.

11 94. Based on the fat, saturated fat, cholesterol and sodium content in Defendant’s (i)
 12 Lay’s Classic Potato Chips, (ii) Lay’s Honey Barbecue Potato Chips, (iii) Lay’s Kettle Cooked
 13 Mesquite BBQ Potato Chips, (iv) Cheetos Puffs, (v) Fritos Original Corn Chips and (vi) the
 14 similarly labeled products identified in paragraph 84, pursuant to federal and California law,
 15 Defendant must include a warning statement adjacent to the trans fat nutrient claim that informs
 16 consumers of the high levels of fat, saturated fat, cholesterol or sodium. No such disclosure
 17 statement currently exists on these products. Therefore, Defendant’s (i) Lay’s Classic Potato
 18 Chips, (ii) Lay’s Honey Barbecue Potato Chips, (iii) Lay’s Kettle Cooked Mesquite BBQ Potato
 19 Chips, (iv) Cheetos Puffs, (v) Fritos Original Corn Chips and (vi) the similarly labeled products
 20 identified in paragraph 84 are misbranded as a matter of federal and California law and cannot be
 21 sold and because of this fact have no economic value and are legally worthless.

22 95. In October 2009, the FDA issued its FOP Guidance, to address its concerns about
 23 front of package labels. Despite the issuance of the 2009 FOP Guidance, Defendant did not
 24 remove the improper and misleading “0g Trans Fat” nutrient content claims from its (i) Lay’s
 25 Classic Potato Chips, (ii) Lay’s Honey Barbecue Potato Chips, (iii) Lay’s Kettle Cooked
 26 Mesquite BBQ Potato Chips, (iv) Cheetos Puffs, (v) Fritos Original Corn Chips and (vi) the
 27 similarly labeled products identified in paragraph 84.

1 96. On March 3, 2010, the FDA issued an Open Letter which reiterated the FDA's
 2 concern regarding false and misleading labeling by food manufacturers. In pertinent part the letter
 3 stated:

4 To address these concerns, FDA is notifying a number of manufacturers that their
 5 labels are in violation of the law and subject to legal proceedings to remove
 6 misbranded products from the marketplace. While the warning letters that convey
 7 our regulatory intentions do not attempt to cover all products with violative labels,
 8 they do cover a range of concerns about how false or misleading labels can
 9 undermine the intention of Congress to provide consumers with labeling
 10 information that enables consumers to make informed and healthy food choices.
 11 For example:

- 12 • Claims that a product is free of trans fats, which imply that the product is a
 13 better choice than products without the claim, can be misleading when a
 14 product is high in saturated fat, and especially so when the claim is not
 15 accompanied by the required statement referring consumers to the more
 16 complete information on the Nutrition Facts panel.

17 These examples and others that are cited in our warning letters are not indicative
 18 of the labeling practices of the food industry as a whole. In my conversations
 19 with industry leaders, I sense a strong desire within the industry for a level
 20 playing field and a commitment to producing safe, healthy products. That
 21 reinforces my belief that FDA should provide as clear and consistent guidance as
 22 possible about food labeling claims and nutrition information in general, and
 23 specifically about how the growing use of front-of-pack calorie and nutrient
 24 information can best help consumers construct healthy diets.

25 I will close with the hope that these warning letters will give food manufacturers
 26 further clarification about what is expected of them as they review their current
 27 labeling. I am confident that our past cooperative efforts on nutrition information
 28 and claims in food labeling will continue as we jointly develop a practical,
 1 science-based front-of-pack regime that we can all use to help consumers choose
 2 healthier foods and healthier diets.

2 http://www.fda.gov/Food/IngredientsPackagingLabeling/LabelingNutrition/ucm202733.h
 3 tm (attached as Exhibit 7).

4 97. Notwithstanding the Open Letter, Defendant has utilized this improper trans fat
 5 nutrient content claims, despite the express guidance of the FDA in the Open Letter that "claims
 6 that a product is free of trans fats, which imply that the product is a better choice than products
 7 without the claim, can be misleading when a product is high in saturated fat [or sodium,
 8 cholesterol or total fat], and especially so when the claim is not accompanied by the required
 9 statement referring consumers to the more complete information on the Nutrition Facts panel." *Id.*

1 98. Defendant has also ignored the FDA's Guidance for Industry, A Food Labeling
 2 Guide, which detailed the FDA's guidance on how to make nutrient content claims about food
 3 products that contain "one or more nutrients [like total fat at levels] in the food that may increase
 4 the risk of disease or health related condition that is diet related." Defendant has utilized
 5 improper trans fat nutrient claims on the labels of its Defendant's (i) Lay's Classic Potato Chips,
 6 (ii) Lay's Honey Barbecue Potato Chips, (iii) Lay's Kettle Cooked Mesquite BBQ Potato Chips,
 7 (iv) Cheetos Puffs, (v) Fritos Original Corn Chips and (vi) the similarly labeled products
 8 identified in paragraph 84. As such, these products ran afoul of FDA guidance as well as
 9 California and federal law.

10 99. In addition to its guidance to industry, the FDA has sent warning letters to the
 11 industry, including many of Defendant's peer food manufacturers, for the same types of improper
 12 "0 grams Trans Fat" and "No Trans Fat" nutrient content claims described above. In these letters
 13 the FDA indicated that as a result of the same type of 0 gram trans fat claims utilized by
 14 Defendant, products were in "violation of the Federal Food, Drug, and Cosmetic Act ... and the
 15 applicable regulations in Title 21, Code of Federal Regulations, Part 101 (21 CFR 101)" and
 16 "misbranded within the meaning of section 403 because the product label bears a nutrient content
 17 claim but does not meet the requirements to make the claim." *See Exhibit 19.*

18 100. The warning letters were hardly isolated, as the FDA has issued at least nine other
 19 warning letters to other companies for the same type of improper "0g Trans Fat" nutrient content
 20 claims at issue in this case.

21 101. Courts have found this exact kind of label representation to be misleading. "A
 22 disqualifying level of, say, saturated fat is four grams per "reference amount customarily
 23 consumed." 21 C.F.R. § 101.13(h)(1). If this level is exceeded, a food purveyor is prohibited from
 24 making an unqualified claim touting the health benefits of another nutrient in the food. This is
 25 because the Agency has reasoned that the beneficent claim, standing alone, would be
 26 misleading." *Chacanaca v. Quaker Oats Co.*, 752 F. Supp. 2d 1111 (N.D. Cal. 2010). This Court
 27 has already held that a disqualifying claim such as Defendant's "0 grams Trans Fat," even if
 28 accurate, may be unlawful and misleading. *Wilson v. Frito-Lay North America, Inc.*, 2013 WL

1 1320468 (N.D. April 1, 2013)(Plaintiffs sufficiently alleged claim that the “0 Grams Trans Fat”
 2 statement on bags of potato chips was deceptive because, accompanied by a disclosure of at least
 3 one of the ingredients that 21 C.F.R. § 101.13(h)(1) requires to be disclosed, they and other
 4 reasonable consumers would think that the statements on the labels make accurate claims about
 5 the labeled products’ nutritional content when, in fact, they do not; disqualifying claim such as;
 6 “0 grams Trans Fat,” even if accurate, may be unlawful and misleading). In *Chacanaca*, Judge
 7 Seeborg explained:

8 The federal regulatory statute provides for this precise scenario: that is, it
 9 categorizes as misleading and therefore prohibited even true nutrient content
 10 claims if the presence of another “disqualifying” nutrient exceeds and amount
 11 established by regulation. The Agency has by regulation imposed “disqualifying”
 12 levels for only four nutrients: total fat, saturated fat, cholesterol, and sodium.
 13 21C.F.R. §§ 101.13(h)(1), 101.14(a)(4). It is important to note how disqualifying
 14 claims work. A disqualifying level of say, saturated fat is four grams per
 15 “reference amount customarily consumed.” 21C.F.R. § 101.13 (h)(1). If this level
 16 is exceeded, a food purveyor is prohibited from making an unqualified claim
 17 touting the health benefits of another nutrient in the food. This is because the
 18 Agency has reasoned that the beneficent claim, standing alone, would be
 19 misleading.

20 *Chacanaca*, 752 F. Supp. 2d at 1122 (emphasis in original).

21 102. Despite the FDA’s numerous warnings to industry, Defendant has continued to sell
 22 (i) Lay’s Classic Potato Chips, (ii) Lay’s Honey Barbecue Potato Chips, (iii) Lay’s Kettle Cooked
 23 Mesquite BBQ Potato Chips, (iv) Cheetos Puffs, (v) Fritos Original Corn Chips and (vi) the
 24 similarly labeled products identified in paragraph 84 bearing improper “0g Trans Fat” nutrient
 25 content claims without meeting the requirements to make this claim.

26 103. Plaintiffs did not know, and had no reason to know, that Defendant’s Lay’s
 27 Classic Potato Chips, Lay’s Honey Barbecue Potato Chips, Kettle Cooked BBQ, Cheetos Puffs
 28 and Fritos were misbranded, and bore “0g Trans Fat” nutrient claims despite failing to meet the
 requirements to make those nutrient claims. Plaintiffs read and relied upon Defendant’s front of
 package “0g Trans Fat” statement. Plaintiffs were equally unaware that Defendant’s (i) Lay’s
 Classic Potato Chips, (ii) Lay’s Honey Barbecue Potato Chips, (iii) Kettle Cooked BBQ Potato
 Chips, (iv) Cheetos Puffs and (v) Fritos Original Corn Chips contained one or more nutrients like
 total fat at levels in the food that, according to the FDA, “may increase the risk of disease or

1 health related condition that is diet related.” Because of Defendant’s unlawful “0g Trans Fat”
 2 claim, Plaintiffs were misled into the erroneous belief that the product only made positive
 3 contributions to their diet and did not contain one or more nutrients like total fat at levels in the
 4 food that may increase the risk of disease or health related condition that is diet related.

5 104. Plaintiffs and the Class would not have purchased (i) Lay’s Classic Potato Chips,
 6 (ii) Lay’s Honey Barbecue Potato Chips, (iii) Lay’s Kettle Cooked Mesquite BBQ Potato Chips,
 7 (iv) Cheetos Puffs, (v) Fritos Original Corn Chips and (vi) the similarly labeled products
 8 identified in paragraph 84.

9 **D. Defendant’s Website Claims Render Certain Products Misbranded**
 10 **Statements on Websites Constitute Labeling**

11 105. Both federal and California law and the FDA both consider websites to be part of a
 12 label. The Food, Drug and Cosmetic Act defines a label as “a display of written, printed, or
 13 graphic matter upon the immediate container of any article...” 21 U.S.C. § 321(k). Labeling is
 14 defined under the Act as “all labels and other written, printed or graphic matter (1) upon any
 15 article or any of its containers or wrappers, or (2) accompanying such article.” 21 U.S.C. §
 16 321(m). FDA guidance states: “if a label for a product contained a statement that referred the
 17 consumer to a specific website for additional information about a claim for a product, the website
 18 is likely to be ‘labeling.’”

19 <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm053425.htm> (attached as Exhibit 20).

21 106. In addition to this guidance, the FDA has also repeatedly issued warning letters
 22 indicating websites — without specific reference to a product claim — are labeling under 21
 23 U.S.C § 321(m). In a warning letter to Unilever, Inc., the FDA stated:

24 A link to your website, www.lipton.com appears on your ... product label. This
 25 website directs U.S. visitors to another website, www.liptont.com. **We have**
determined that your websites, www.lipton.com and www.liptont.com are
labeling within the meaning of section 201(m) of the Act for your ... product.

27 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2010/ucm224509.htm> (attached
 28 as Exhibit 21).

1 Also, in a warning letter to Ocean Spray Cranberries, Inc., the FDA explained:

2
3 The Food and Drug Administration (FDA) reviewed your firm's internet labeling
4 for your Ocean Spray juice products. The container label for your grapefruit juice
5 products directs the consumer to your website via the statement "For grapefruit
6 health facts visit: www.oceanspraygrapefruit.com." **The container labels for
7 your other Ocean Spray juice products also bear your internet website
8 address "www.oceanspray.com."** We have concluded that the labeling found
9 on your internet sites causes your Ocean Spray juice products to be in
10 violation of the Federal Food, Drug, and Cosmetic Act [the Act], and Title 21,
11 Code of Federal Regulations [21 CFR].

12
13 [http://www.fda.gov/downloads/ICECI/EnforcementActions/WarningLetters/2001/UCM069236.p](http://www.fda.gov/downloads/ICECI/EnforcementActions/WarningLetters/2001/UCM069236.pdf)
14 df (emphasis added)(attached as Exhibit 22). By placing their website address, www.lays.com,
15 on the labels of its Lay's Classic Potato Chips and Lay's Kettle Cooked Mesquite BBQ Potato
16 Chips, Defendant invites and encourages consumers to look at the nutritional facts and health
17 claims made on the website, which supports the unlawful claims made both on the product labels
18 and on the website itself. The website is misbranded because it is part of the product labeling.

19 **Website "Good Source of" Claims**

20 107. The Defendant's website, fritolay.com, contains unlawful and misleading
21 statements that the following Purchased Products were a "Good Source of Vitamin C."

22 Lay's Classic Potato Chips
23 Lay's Kettle Cooked Mesquite BBQ Potato Chips

24 108. The Defendant's website, fritolay.com, also contains unlawful and misleading
25 statements that the following similar products were a "Good Source of Vitamin C":

26 Lay's Barbecue Flavored Potato Chips
27 Lay's Cheddar & Sour Cream Flavored Potato Chips
28 Lay's Chile Lemon Flavored Potato Chips
Lay's Dill Pickle Flavored Potato Chips
Lay's Flamin' Hot Flavored Potato Chips
Lay's Kettle Cooked Jalapeno Flavored Potato Chips
Lay's Kettle Cooked Maui Onion Flavored Potato Chips
Lay's Kettle Cooked Original Potato Chips
Lay's Kettle Cooked Sea Salt & Vinegar Flavored Potato Chips
Lay's Salt and Vinegar Potato Chips
Lay's Simply Natural Sea Salt Flavored Thick Cut Potato Chips
Lay's Sour Cream & Onion Flavored Potato Chips
Lay's Wavy Au Gratin Flavored Potato Chips
Lay's Wavy Original Potato Chips
Maui Style Onion Flavored Potato Chips
Maui Style Regular Potato Chips
Miss Vickie's Jalapeno Kettle Cooked Flavored Potato Chips

1 Miss Vickie's Sea Salt & Vinegar Kettle Cooked Flavored Potato Chips
 2 Miss Vickie's Simply Sea Salt Kettle Cooked Potato Chips
 3 Miss Vickie's Smokehouse BBQ Kettle Cooked Flavored Potato Chips
 4 Ruffles Original Potato Chips
 5 Ruffles Sour Cream & Onion Flavored Potato Chips

4 <http://www.fritolay.com/your-health/us-products-considered-a-good-source-of-vitamin-c.html>

5 Attached as Exhibit 23.

6 109. The following unlawful and misleading language appears on Defendant's website,
 7 which is incorporated, as a matter of law, into the label of Defendant's Lay's Classic Potato
 8 Chips, Lay's Kettle Cooked Mesquite BBQ Potato Chips and the similarly labeled products
 9 referenced in paragraph 105: "**Good Source of Vitamin C.**" This claim was unlawful and
 10 misleading because the website failed to disclose that the products had undesirable nutrients at
 11 levels that triggered a mandatory disclosure of that the product contained nutrients at levels that
 12 raised the risk of diet-related disease or health-related condition.

13 110. Pursuant to Section 403 of the FDCA, a claim that characterizes the level of a
 14 nutrient in a food is a "nutrient content claim" that must be made in accordance with the
 15 regulations that authorize the use of such claims. 21 U.S.C. § 343(r)(1)(A). California expressly
 16 adopted the requirements of 21 U.S.C. § 343(r) in § 110670 of the Sherman Law.

17 111. Nutrient content claims are claims about specific nutrients contained in a product.
 18 They are typically made on the front of packaging in a font large enough to be read by the
 19 average consumer. Because these claims are relied upon by consumers when making purchasing
 20 decisions, the regulations govern what claims can be made in order to prevent misleading claims.

21 112. Section 403(r)(1)(A) of the FDCA governs the use of expressed and implied
 22 nutrient content claims on labels of food products that are intended for sale for human
 23 consumption. *See* 21 C.F.R. § 101.13.

24 113. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims,
 25 which California has expressly adopted. California Health & Safety Code § 110100.

26 114. An "expressed nutrient content claim" is defined as any direct statement about the
 27 level (or range) of a nutrient in the food (e.g., "low sodium" or "contains 100 calories"). *See* 21
 28 C.F.R. § 101.13(b)(1).

1 115. An “implied nutrient content claim” is defined as any claim that: (i) describes the
 2 food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a
 3 certain amount (*e.g.*, “high in oat bran”); or (ii) suggests that the food, because of its nutrient
 4 content, may be useful in maintaining healthy dietary practices and is made in association with an
 5 explicit claim or statement about a nutrient (*e.g.*, “healthy, contains 3 grams (g) of fat”). 21
 6 C.F.R. § 101.13(b)(2)(i-ii).

7 116. FDA regulations authorize use of a limited number of defined nutrient content
 8 claims. In addition to authorizing the use of only a limited set of defined nutrient content terms on
 9 food labels, FDA's regulations authorize the use of only certain synonyms for these defined terms.
 10 If a nutrient content claim or its synonym is not included in the food labeling regulations it cannot
 11 be used on a label. Only those claims, or their synonyms, that are specifically defined in the
 12 regulations may be used. All other claims are prohibited. 21 C.F.R. § 101.13(b).

13 117. Only approved nutrient content claims will be permitted on the food label, and all
 14 other nutrient content claims will misbrand a food. It should thus be clear which type of claims
 15 are prohibited and which are permitted. Manufacturers are on notice that the use of an
 16 unapproved nutrient content claim is prohibited conduct. 58 F.R. 2302. In addition, 21 U.S.C. §
 17 343(r)(2) prohibits using unauthorized undefined terms and declares foods that do so to be
 18 misbranded.

19 118. In order to appeal to consumer preferences, Defendant has repeatedly made
 20 unlawful nutrient content claims that its Lay's Classic Potato Chips, Lay's Kettle Cooked
 21 Mesquite BBQ Potato Chips and the similarly labeled products referenced in paragraph 105 are a
 22 “good source” of nutrients such as Vitamin C. These kinds of nutrient content claims are
 23 unlawful because they fail to comply with the nutrient content claim provisions in violation of 21
 24 C.F.R. § 101.13(h)(1), which has been incorporated in California's Sherman Law.

25 119. The regulations specify absolute and comparative levels at which foods qualify to
 26 make these claims for particular nutrients (*e.g.*, low fat . . . more vitamin C) and list synonyms
 27 that may be used in lieu of the defined terms. Certain implied nutrient content claims (*e.g.*,
 28 healthy) also are defined.

1 120. Defendant has repeatedly made unlawful nutrient content claims about Vitamin C
 2 and other nutrients that fail to utilize one of the limited defined terms appropriately. These
 3 nutrient content claims are unlawful because they fail to comply with the nutrient content claim
 4 provisions in violation of 21 C.F.R. § 101.13 which has been incorporated in California's
 5 Sherman Law.

6 121. 21 C.F.R. § 101.13(h) categorizes as misleading and therefore prohibited even true
 7 nutrient content claims if the presence of another "disqualifying" nutrient exceeds the amount
 8 established by regulation. The disclosure level of disqualifying nutrients are:

9 If a food ... contains more than 13.0 g of fat, 4.0 g of saturated fat, 60
 10 milligrams (mg) of cholesterol, or 480 mg of sodium per reference amount
 11 customarily consumed, per labeled serving, or, for a food with a reference
 12 amount customarily consumed of 30 g or less ... per 50 g ... then that food
 13 must bear a statement disclosing that the nutrient exceeding the specified
 14 level is present in the food as follows: "See nutrition information for
 15 content" with the blank filled in with the identity of the nutrient exceeding
 16 the specified level, e.g., "See nutrition information for fat content."

17 21 C.F.R. § 101.13(h). Failure to disclose a material fact is *per se* misleading under 21 C.F.R.

18 1.21.

19 122. Defendant's Lay's Classic Potato Chips, Lay's Kettle Cooked Mesquite BBQ
 20 Potato Chips and the similarly labeled products referenced in paragraph 105 all contain
 21 disqualifying levels of fat, which make Defendant's "Good Source Of" claim unlawful and
 22 misleading.

23 123. The nutrient content claims regulations discussed herein are intended to ensure that
 24 consumers are not misled as to the actual or relative levels of nutrients in food products.
 25 Defendant has violated these referenced regulations. By placing their website address,
 26 www.lays.com, on the labels of its Lay's Classic Potato Chips and Lay's Kettle Cooked Mesquite
 27 BBQ Potato Chips, Defendant invites and encourages consumers to look at the nutritional facts
 28 and health claims made on the website, which supports the unlawful claims made both on the
 product labels and on the website itself. The product is misbranded because the website is part of
 the product labeling. Therefore, Defendant's Lay's Classic Potato Chips and Lay's Kettle Cooked
 Mesquite BBQ Potato Chips and the products referenced in paragraph 105 are misbranded as a

1 matter of California and federal law and cannot be sold or held because they have no economic
 2 value and are legally worthless.

3 124. By placing their website address, www.fritolay.com, on the labels of its
 4 Defendant's Lay's Classic Potato Chips, Lay's Kettle Cooked Mesquite BBQ Potato Chips and
 5 the similarly labeled products referenced in paragraph 105, Defendant misbranded these products.
 6 The website misbrands the products because the website is listed on the product label.

7 125. For these reasons, Defendant's nutrient content claims are false and misleading
 8 and in violation of 21 C.F.R. § 101.13 and identical California law, Lay's Classic Potato Chips,
 9 Lay's Kettle Cooked Mesquite BBQ Potato Chips and the similarly labeled products referenced in
 10 paragraph 105 are misbranded as a matter of law. Defendant has violated these referenced
 11 regulations. Therefore, Defendant's Lay's Classic Potato Chips, Lay's Kettle Cooked Mesquite
 12 BBQ Potato Chips and the similarly labeled products referenced in paragraph 105 products are
 13 misbranded as a matter of federal and California law and cannot be sold or held and thus have no
 14 economic value and are legally worthless.

15 126. Defendant's claims in this respect are false and misleading and the products are in
 16 this respect misbranded under identical federal and California laws. Plaintiffs and members of the
 17 Class who purchased these products paid an unwarranted premium for these products.

18 127. Lay's Classic Potato Chips, Lay's Kettle Cooked Mesquite BBQ Potato Chips and
 19 the similarly labeled products referenced in paragraph 105 product are unlawful, misbranded and
 20 violate the Sherman Law (through incorporation of 21 C.F.R. § 101.13) and are misleading and
 21 deceptive because the phrases "Good Source of Vitamin C" is used despite the fact that the
 22 website labeling of these products do not disclose that these products contain disqualifying
 23 amounts of fat as required by 21 C.F.R. § 101.13(h).

24 128. Plaintiffs and the Class would not have purchased Lay's Classic Potato Chips,
 25 Lay's Kettle Cooked Mesquite BBQ Potato Chips and the similarly labeled products referenced in
 26 paragraph 105 had they known they were illegal to sell or possess.

27 **Website "Low Sodium" Claims**
 28

1 129. The Defendant's website, fritolay.com, contains unlawful and misleading
 2 statements that the Purchased Products were a low in sodium.

3 130. In order to appeal to consumer preferences, Defendant has repeatedly made false
 4 and unlawful "low sodium" nutrient content claims about the sodium levels in its (i) Lay's Classic
 5 Potato Chips, (ii) Lay's Honey Barbecue Potato Chips (iii) Lay's Kettle Cooked Mesquite BBQ
 6 Potato Chips, (iv) Cheetos Puffs and (v) Fritos Original Corn Chips. These claims misrepresent
 7 and greatly understate the levels of sodium in their products. In doing so these claims violate 21
 8 C.F.R. § 101.61 which has been adopted by the State of California.

9 131. Defendant recognized that because of the significant health risks associated with
 10 sodium intake, consumers were increasingly seeking to avoid or limit sodium in their diets and
 11 thus were looking for low sodium food options.

12 132. Rather than reformulate all of their food products so that they were at or below the
 13 "low" sodium benchmarks they knew consumers were seeking, Defendant simply misrepresented
 14 a number of their sodium laden products and made false "low sodium" representations about
 15 these products and falsely depicted these products in their labeling, advertising and marketing
 16 materials and on their websites as being "low sodium" options when in fact they exceed the
 17 maximum levels of sodium that a "low sodium" product can possess.

18 133. Pursuant to 21 C.F.R. § 101.6(b)(4) the term "low sodium" may be used on the
 19 labels or labeling of food if the food has a reference amount of less than 30 grams or less and
 20 contains 140 mgs or less sodium per reference amount customarily consumed and per 50 grams.
 21 By this definition most if not all of the Defendant's snack chips are not "low sodium" products,
 22 including Defendant's i) Lay's Classic Potato Chips, (ii) Lay's Honey Barbecue Potato Chips (iii)
 23 Lay's Kettle Cooked Mesquite BBQ Potato Chips, (iv) Cheetos Puffs and (v) Fritos Original
 24 Corn Chips.

25 134. Notwithstanding this fact, Defendant misrepresents and understates the levels of
 26 sodium in its i) Lay's Classic Potato Chips, (ii) Lay's Honey Barbecue Potato Chips (iii) Lay's
 27 Kettle Cooked Mesquite BBQ Potato Chips, (iv) Cheetos Puffs and (v) Fritos Original Corn
 28 Chips. According to Defendant "Snack chips are actually not as high in sodium as most people

1 think...[i]n fact a serving of most Frito-Lay snack chips ... has three times less sodium than a
 2 bowl of low sodium soup." *See* Exhibit 24. The term "snack chips" snacks" includes all of the
 3 Purchased Products and the Class Products. The term "snack chips" snacks" includes all of the
 4 Purchased Products and the Class Products. This is simply a false statement. By definition "low
 5 sodium" soup could not contain more than 140 mgs of sodium per serving (which is 8 ounces).
 6 Three times less than this would thus be no more than 47 mgs of sodium. In fact, the sodium
 7 levels of Defendant's i) Lay's Classic Potato Chips, (ii) Lay's Honey Barbecue Potato Chips (iii)
 8 Lay's Kettle Cooked Mesquite BBQ Potato Chips, (iv) Cheetos Puffs and (v) Fritos Original
 9 Corn Chips were far in excess of this level with many such as the ones bought by the Plaintiff
 10 being approximately 2 to 5 times more than this. In addition, Defendant makes other false
 11 statements on its website (via product brochures) indicating its products are not high in sodium,
 12 when in fact, they are. *See* Exhibit 25. Defendant explicitly states that its products are not high in
 13 sodium on its website:

14 135. On Defendant's website, on its Frequently Asked Questions page, Defendant
 15 explicitly denies that its products are high in sodium:

16 Q: Frito-Lay makes salty snacks ... so aren't they high in sodium?
 17 A: Actually, no.

18 www.fritolay.com/your-health/feature-answers.html (attached as Exhibit 26). The term "salty
 19 snacks" includes all of the Purchased Products and the Class Products.

20 136. This false representation coupled with Defendant's other statements about sodium
 21 and how its products were not as high in sodium as one would think based on taste or other
 22 factors unlawfully overstated the healthiness of Defendant's i) Lay's Classic Potato Chips, (ii)
 23 Lay's Honey Barbecue Potato Chips (iii) Lay's Kettle Cooked Mesquite BBQ Potato Chips, (iv)
 24 Cheetos Puffs and (v) Fritos Original Corn Chips while understating their relative sodium levels.

25 137. Defendant falsely represented that its i) Lay's Classic Potato Chips, (ii) Lay's
 26 Honey Barbecue Potato Chips (iii) Lay's Kettle Cooked Mesquite BBQ Potato Chips, (iv)
 27 Cheetos Puffs and (v) Fritos Original Corn Chips and the Class products were beneath the relative
 28 sodium levels represented by a "low sodium" option. These products were falsely labeled and

1 misbranded because contrary to the various false representations that they were a “low sodium”
 2 option, they contained disqualifying levels of sodium precluding such a representation.

3 138. Products which claim to contain “low sodium” cannot contain more than 140 mgs
 4 of sodium per serving. The Lay’s Classic Potato Chips purchased by Plaintiff Wilson and
 5 Plaintiff Campen contain 170mg of sodium per serving. Plaintiff Campen also purchased Lay’s
 6 Honey Barbecue Potato Chips which 103mg of sodium per serving; Lay’s Kettle Cooked
 7 Mesquite BBQ Potato Chips which contain 210mg of sodium per serving; Cheetos Puffs, which
 8 contain 300mg of sodium per serving; and Fritos Original Corn Chips which contain 160mg of
 9 sodium per serving. The products purchased by Plaintiffs were incapable of complying with the
 10 “low sodium” standard and in fact were far higher than Defendant in comparison with “low
 11 sodium” soup options.

12 139. By placing their website address, www.fritolay.com, on the labels of its
 13 Defendant’s (i) Lay’s Classic Potato Chips, (ii) Honey Barbecue Potato Chips, (iii) Lay’s Kettle
 14 Cooked Mesquite BBQ Potato Chips, (iv) Cheetos Puffs and (v) Fritos Original Corn Chips and
 15 the Class Products, Defendant misbranded these products. The website is misbranded because it
 16 is part of the product labeling.

17 140. For these reasons, Defendant’s “low sodium” claims at issue in this Second
 18 Amended Complaint are false and misleading and in violation of identical California and federal
 19 law and the products at issue are misbranded as a matter of law. Therefore, Defendant’s
 20 Defendant’s (i) Lay’s Classic Potato Chips, (ii) Honey Barbecue Potato Chips, (iii) Lay’s Kettle
 21 Cooked Mesquite BBQ Potato Chips, (iv) Cheetos Puffs and (v) Fritos Original Corn Chips and
 22 the Class Products which contain more than 140mg of sodium are misbranded as a matter of
 23 California and federal law and cannot be sold or held and thus are legally worthless. Plaintiff and
 24 members of the Class who purchased these products paid an unwarranted premium for these
 25 products.

26 141. Plaintiffs and the Class would not have purchased (i) Lay’s Classic Potato Chips,
 27 (ii) Honey Barbecue Potato Chips, (iii) Lay’s Kettle Cooked Mesquite BBQ Potato Chips, (iv)

1 Cheetos Puffs and (v) Fritos Original Corn Chips had they known they were illegal to sell or
 2 possess.

3 **Website Health Claims**

4 142. The Defendant's website, fritolay.com, contains unlawful and misleading
 5 statements that the Purchased Products were "healthy." The website is part of the Purchased
 6 Products labeling because the website is listed on the Purchased Products' labels.

7 143. Defendant has violated identical California and federal law by making numerous
 8 "healthy" claims about its products on its website. In promoting (i) Lay's Classic Potato Chips, (ii)
 9 Lay's Honey Barbecue Potato Chips, (iii) Kettle Cooked Mesquite BBQ Potato Chips, (iv)
 10 Cheetos Puffs and (v) Fritos Original Corn Chips and the products in paragraph 84 as "healthy,"
 11 Defendants have violated the Sherman law.

12 144. The use of the term "healthy" is an implied nutrient content claim about general
 13 nutrition that is defined by FDA regulation. In general, the term may be used in labeling an
 14 individual food product that:

15 Qualifies as both low fat and low saturated fat;
 16 Contains 480 mg or less of sodium per
 17 reference amount and per labeled serving, and
 18 per 50 g (as prepared for typically rehydrated
 19 foods) if the food has a reference amount of 30
 20 g or 2 tbsps or less;

21 Does not exceed the disclosure level for
 22 cholesterol (e.g., for most individual food
 23 products, 60 mg or less per reference amount
 24 and per labeled serving size); and

25 Except for raw fruits and vegetables, certain
 26 frozen or canned fruits and vegetables, and
 27 enriched cereal-grain products that conform to
 28 a standard of identity, provides at least 10% of
 the daily value (DV) of vitamin A, vitamin C,
 calcium, iron, protein, or fiber per reference
 amount. Where eligibility is based on a nutrient
 that has been added to the food, such
 fortification must comply with FDA's
 fortification policy.

27 21 C.F.R. § 101.65(d)(2). Defendant is aware of this rule and expressly states in their marketing
 28 materials that [f]or a food to be labeled "healthy" it must meet a specific set of criteria established

1 by the Food and Drug Administration” before referencing some of the criteria.

2 145. The FDA’s regulation on the use of the term healthy also encompasses other,
 3 derivative uses of the term health (*e.g.*, healthful, healthier) in food labeling. 21 C.F.R. §
 4 101.65(d).

5 146. Defendant has violated the provisions of § 21 C.F.R. §101.14, 21 C.F.R. §101.65,
 6 21 C.F.R. §101.76, 21 U.S.C. § 321(g)(1)(D) and 21 U.S.C. § 352(f)(1) by including certain
 7 claims on their product labeling and website. Despite being aware of the criteria and restrictions
 8 that pertain to “healthy” claims, the Defendant makes numerous unlawful “healthy” claims about
 9 its (i) Lay’s Classic Potato Chips, (ii) Lay’s Honey Barbecue Potato Chips, (iii) Kettle Cooked
 10 Mesquite BBQ Potato Chips, (iv) Cheetos Puffs and (v) Fritos Original Corn Chips and their
 11 components. Defendant indicates that these products and their ingredients are “healthy,
 12 “healthier,” “healthful,” and an “important part of a healthier diet. Defendant indicates that eating
 13 their snacks offers “health benefits.” Defendant also states that fried foods like its snack chips are
 14 not “unhealthy” which is in effect a claim that these products are healthy. *See* Exhibits 26.
 15 Defendant expressly states that its Lay’s Classic Potato Chips and Lay’s potato chips in general
 16 are a “healthier” option by being fried in “healthier oils.” *See* Exhibit 25. By definition, the term
 17 “fried food” and “snack food” includes the Purchased Products and the products listed in
 18 paragraph 84.

19 147. Defendant does this in violation of 21 C.F.R. §101.65 which has been adopted by
 20 California and which precludes the use of these terms about the Defendant’s (i) Lay’s Classic
 21 Potato Chips, (ii) Lay’s Honey Barbecue Potato Chips, (iii) Kettle Cooked Mesquite BBQ Potato
 22 Chips, (iv) Cheetos Puffs and (v) Fritos Original Corn Chips and purchased by Plaintiffs which
 23 have disqualifying levels of unhealthy nutrients like fat. In addition, the products listed in
 24 paragraph 84 also have disqualifying levels of fat.

25 148. In addition to their unlawful “healthy” claims, Defendant makes a number of
 26 unlawful health related claims. For example, Defendants claim that the ingredients in all of its
 27 chips “support heart health and that “the healthier oils … used in all Frito-Lay snack chips, are
 28 high in polyunsaturated and monounsaturated fats that have been proven to reduce LDL (bad)

1 cholesterol and maintain HDL (good) cholesterol levels, which have been associated with a
 2 reduction in the risk for heart disease.” <http://www.fritolay.com/your-health/goodbye-trans->
 3 fats.html (attached as Exhibit 27). The term “snack chips” includes the Purchased Products and
 4 the products listed in paragraph 84.

5 149. The therapeutic claims on Defendant’s website establish that Defendant’s products
 6 are drugs because they are intended for use in the cure, mitigation, treatment, or prevention of
 7 disease. Defendant’s products are not generally recognized as safe and effective for the above
 8 referenced uses and, therefore, the products would be "new drug[s]" under section 201(p) of the
 9 Act [21 U.S.C. § 321(p)]. New drugs may not be legally marketed in the U.S. without prior
 10 approval from the FDA as described in section 505(a) of the Act [21 U.S.C. § 355(a)]. FDA
 11 approves a new drug on the basis of scientific data submitted by a drug sponsor to demonstrate
 12 that the drug is safe and effective. Defendant also violated California Health & Safety Code §
 13 110403 which prohibits the advertisement of products that are represented to have any effect on
 14 enumerated conditions, disorders and diseases including cancer and heart diseases unless the
 15 materials have federal approval.

16 150. Defendant’s materials and advertisements not only violate regulations adopted by
 17 California such as 21 C.F.R. § 101.14, they also violate California Health & Safety Code §
 18 110403 which prohibits the advertisement of products that are represented to have any effect on
 19 enumerated conditions, disorders and diseases including cancer and heart diseases unless the
 20 materials have federal approval.

21 151. The labels of (i) Lay’s Classic Potato Chips, (ii) Lay’s Honey Barbecue Potato
 22 Chips, (iii) Kettle Cooked Mesquite BBQ Potato Chips, (iv) Cheetos Puffs and (v) Fritos Original
 23 Corn Chips each contain an invitation to visit Defendant’s website, www.lays.com.

24 152. By placing their website address, www.lays.com, on the labels of its (i) Lay’s
 25 Classic Potato Chips, (ii) Lay’s Honey Barbecue Potato Chips, (iii) Kettle Cooked Mesquite BBQ
 26 Potato Chips, (iv) Cheetos Puffs, (v) Fritos Original Corn Chips and the products identified in
 27 paragraph 84, Defendant invites and encourages consumers to look at the nutritional facts and
 28 health claims made on the website, which supports the unlawful claims made both on the product

1 labels and on the website itself. The website is misbranded because it is part of the product
 2 labeling.

3 153. Defendant's health related claims are false and misleading and the products are in
 4 this respect misbranded under identical California and federal laws. Misbranded products cannot
 5 be legally sold and thus are legally worthless and have no economic value.

6 154. Plaintiffs and the Class would not have purchased (i) Lay's Classic Potato Chips,
 7 (ii) Honey Barbecue Potato Chips, (iii) Lay's Kettle Cooked Mesquite BBQ Potato Chips, (iv)
 8 Cheetos Puffs and (v) Fritos Original Corn Chips had they known they were illegal to sell or
 9 possess.

10 **DEFENDANT HAS VIOLATED CALIFORNIA LAW**

11 155. Defendant has violated California Health & Safety Code § 110390 which makes it
 12 unlawful to disseminate false or misleading food advertisements that include statements on
 13 products and product packaging or labeling or any other medium used to directly or indirectly
 14 induce the purchase of a food product.

15 156. Defendant has violated California Health & Safety Code § 110395 which makes it
 16 unlawful to manufacture, sell, deliver, hold or offer to sell any falsely advertised food.

17 157. Defendant has violated California Health & Safety Code §§ 110398 and 110400
 18 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any food
 19 that has been falsely advertised.

20 158. Defendant has violated California Health & Safety Code § 110403 which makes
 21 it unlawful to advertise misbranded food by representing it to have any effect on conditions,
 22 disorders or diseases.

23 159. Defendant has violated California Health & Safety Code § 110660 because its
 24 Purchased Product labels are false and misleading in one or more ways.

25 160. Defendant's Purchased Products and Class Products are misbranded under
 26 California Health & Safety Code § 110665 because their labeling fails to conform to the
 27 requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and the regulations adopted
 28 thereto.

1 161. Defendant's Purchased Products and Class Products are misbranded under
2 California Health & Safety Code § 110670 because their labeling fails to conform with the
3 requirements for nutrient content and health claims set forth in 21 U.S.C. § 343(r) and the
4 regulations adopted thereto.

5 162. Defendants' Purchased Products and Class Products are misbranded under
6 California Health & Safety Code § 110705 because words, statements and other information
7 required by the Sherman Law to appear on their labeling either are missing or not sufficiently
8 conspicuous.

9 163. Defendant's Purchased Products and Class Products are misbranded under
10 California Health & Safety Code § 110735 as they purport to be for special dietary uses, but do
11 not bear information concerning any vitamin or mineral content or other dietary property as
12 necessary to inform purchasers as to the food's value for that use.

13 164. Defendant has violated California Health & Safety Code § 110760 which makes it
14 unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is
15 misbranded.

16 165. Defendant's Purchased Products and Class Products are misbranded under
17 California Health & Safety Code § 110755 because they purport to be or are represented for
18 special dietary uses, and its labels fail to bear such information concerning their vitamin, mineral,
19 and other dietary properties as the Secretary determines to be, and by regulations prescribes as,
20 necessary in order fully to inform purchasers as to its value for such uses.

21 166. Defendant's Purchased Products and Class Products are misbranded under
22 California Health & Safety Code § 110740 because they contain artificial flavoring, artificial
23 coloring and chemical preservatives but fail to adequately disclose that fact on their labeling.

24 167. Defendant has violated California Health & Safety Code § 110765 which makes
25 it unlawful for any person to misbrand any food.

26 168. Defendant has violated California Health & Safety Code § 110770 which makes
27 it unlawful for any person to receive in commerce any food that is misbranded or to deliver or
28 proffer for deliver any such food.

1

2 **PLAINTIFFS PURCHASED DEFENDANT'S PURCHASED PRODUCTS WITH**
UNLAWFUL AND MISLEADING LABELS

3

4 169. Plaintiffs care about the nutritional content of food and seek to maintain a healthy
5 diet.

6 170. Plaintiffs purchased Defendant's Purchased Products as described above on
7 occasions during the Class Period.

8 171. Plaintiffs read the particular label statements described above on Defendant's
9 Purchased Products before purchasing them. Defendant's labels falsely conveyed to the Plaintiffs
10 the net impression that the Purchased Products they bought made only positive contributions to a
11 diet, and did not contain any nutrients at levels that raised the risk of diet-related disease or
health-related condition.

12 172. Plaintiffs read the unlawful and misleading statements referenced above on the
13 labels of Defendant's Purchased Products before purchasing them. If Plaintiffs had known that
14 the unlawful and misleading statements that they read on Defendant's labels misbranded the
15 Purchased Products rendering them unlawful to possess or sell Plaintiffs would not have
16 purchased such products. In addition, Defendant's unlawful statements falsely conveyed to the
17 Plaintiffs the net impression that the Purchased Products they bought made only positive
18 contributions to a diet, and did not contain any nutrients at levels that raised the risk of diet-
related disease or health-related conditions. Plaintiffs relied on Defendant's label statements
19 identified above and based and justified the decision to purchase Defendant's Purchased Products,
20 in substantial part, on Defendant's label statements identified above.

22 173. At point of sale, Plaintiffs did not know, and had no reason to know, that
23 Defendant's Purchased Products were misbranded as set forth herein, and would not have bought
24 the products had they known the truth about them.

25 174. At point of sale, Plaintiffs did not know, and had no reason to know, that claims
26 were improper and unauthorized as set forth herein, and would not have bought the products
27 absent the claims.

1 175. At point of sale, Plaintiffs did not know and had no reason to know that
2 Defendant's Purchased Product labels were unlawful and misleading as set forth herein. As a
3 result of Defendant's improper labeling claims on the Purchased Products, Plaintiffs and
4 thousands of others in California purchased the Purchased Products.

5 176. As a result of Defendant's unlawful and misleading labels contained on the
6 Purchased Products, Plaintiffs and thousands of others in California purchased the Purchased
7 Products. Defendant's labels on the Purchased Products as alleged herein are false and
8 misleading and were designed to increase sales of the Purchased Products. A reasonable person
9 would attach importance to Defendant's label statements as described herein in determining
10 whether to purchase the Purchased Products.

11 177. A reasonable person would also attach importance to whether Defendant's
12 products were legally salable, and capable of legal possession, and to Defendant's representations
13 about these issues in determining whether to purchase the Purchased Products. Plaintiffs would
14 not have purchased Defendant's Purchased Products had they known they were not capable of
15 being legally sold or held.

CLASS ACTION ALLEGATIONS

17 178. Plaintiffs bring this action as a class action pursuant to Federal Rule of Procedure
18 23(b)(2) and 23(b)(3) on behalf of the following “Class:”

19 All persons in the United States, and alternatively, in a subclass of persons in
20 California who, within the Class Period, purchased one or more of the following
products:

21 Lay's Classic Potato Chips
22 Lay's Honey Barbecue Potato Chips
23 Kettle Cooked BBQ Potato Chips
24 Cheetos Puffs
25 Fritos Original Corn Chips
26 Baked! Lay's Barbecue Flavored Potato Crisps
27 Baked! Lay's Parmesan & Tuscan Herb Flavored Potato Crisps
28 Cheetos Crunchy Cheddar Jalapeno Flavored Snacks
29 Cheetos Crunchy Cheese Flavored Snacks
30 Cheetos Crunchy Flamin' Hot Cheese Flavored Snacks
31 Cheetos Crunchy Flamin' Hot Limon Cheese Flavored Snacks
32 Cheetos Crunchy Salsa Con Queso Cheese Flavored Snacks
33 Cheetos Crunchy Xxtra Flamin' Hot Cheese Flavored Snacks
34 Cheetos Puffs Flamin' Hot Cheese Flavored Snacks
35 Cheetos Puffs Twisted Cheese Flavored Snacks

1 Cheetos Simply Natural Puffs White Cheddar Cheese Flavored Snacks
 2 Chester's Butter Flavored Puffcorn Snacks
 3 Chester's Butter Flavored Puffcorn Snacks
 4 Chester's Cheese Flavored Puffcorn Snacks
 5 Chester's Cheese Flavored Puffcorn Snacks
 6 Doritos Dinamita Chipotle Crema Flavored Tortilla Chips
 7 Fritos BBQ Flavored Corn Chips
 8 Fritos Chili Cheese Flavored Corn Chips
 9 Fritos Flamin' Hot Flavored Corn Chips
 10 Fritos Flavor Twists Honey BBQ Flavored Corn Chips
 11 Fritos Lightly Salted Corn Chips
 12 Fritos Scoops! Corn Chips
 13 Lay's Balsamic Sweet Onion Potato Chips
 14 Lay's Chipotle Ranch Potato Chips
 15 Lay's Classic Blt Potato Chips
 16 Lay's Creamy Garden Ranch Potato Chips
 17 Lay's Flamin Hot Potato Chips
 18 Lay's Honey Mustard Potato Chips
 19 Lay's Limon Potato Chips
 20 Lay's Salt And Vinegar Potato Chips
 21 Lay's Sour Cream And Onion Potato Chips
 22 Lay's Wavy Au Gratin Potato Chips
 23 Lay's Wavy Hickory Barbecue Potato Chips
 24 Lay's Wavy Original Potato Chips
 25 Lay's Wavy Ranch Potato Chips
 26 Lay's Barbecue Flavored Potato Chips
 27 Lay's Cajun Herb & Spice Flavored Potato Chips
 28 Lay's Cheddar & Sour Cream Flavored Potato Chips
 29 Lay's Cheesy Garlic Bread Flavored Potato Chips
 30 Lay's Chicken & Waffles Flavored Potato Chips
 31 Lay's Chile Limon Flavored Potato Chips
 32 Lay's Dill Pickle Flavored Potato Chips
 33 Lay's Flamin' Hot Flavored Potato Chips
 34 Lay's Garden Tomato & Basil Flavored Potato Chips
 35 Lay's Honey BBQ Flavored Potato Chips
 36 Lay's Kettle Cooked Creamy Mediterranean Herb Potato Chips
 37 Lay's Kettle Cooked Applewood Smoked BBQ Flavored Potato Chips
 38 Lay's Kettle Cooked Harvest Ranch Potato Chips
 39 Lay's Kettle Cooked Jalapeno Flavored Potato Chips
 40 Lay's Kettle Cooked Maui Onion Flavored Potato Chips
 41 Lay's Kettle Cooked Original Potato Chips
 42 Lay's Kettle Cooked Parmesan And Sun Dried Tomato Potato Chips
 43 Lay's Kettle Cooked Reduced Fat Original Potato Chips
 44 Lay's Kettle Cooked Sea Salt & Cracked Pepper Flavored Potato Chips
 45 Lay's Kettle Cooked Sea Salt & Vinegar Flavored Potato Chips
 46 Lay's Kettle Cooked Sharp Cheddar Flavored Potato Chips
 47 Lay's Kettle Cooked Spicy Cayenne Potato Chips
 48 Lay's Sour Cream & Onion Flavored Potato Chips
 49 Lay's Sriracha Flavored Potato Chips
 50 Lay's Sweet Southern Heat Flavored Potato Chips
 51 Lay's Tangy Carolina BBQ Flavored Potato Chips
 52 Lay's Tapatio Limon Flavored Potato Chips
 53 Lay's Wavy Hickory Barbecue Potato Chips
 54 Lay's Wavy Ranch Potato Chips
 55 Lay's Wavy Roasted Garlic & Sea Salt Flavored Potato Chips

1 Maui Style Salt & Vinegar Flavored Potato Chips
 2 Miss Vickie's Jalapeno Kettle Cooked Flavored Potato Chips
 3 Miss Vickie's Sea Salt & Cracked Pepper Flavored Potato Chips
 4 Miss Vickie's Sea Salt & Vinegar Kettle Cooked Flavored Potato Chips
 5 Miss Vickie's Simply Sea Salt Kettle Cooked Potato Chips
 6 Miss Vickie's Smokehouse BBQ Kettle Cooked Flavored Potato Chips
 7 Ruffles Original Potato Chips
 8 Ruffles Sour Cream & Onion Flavored Potato Chips
 9 Ruffles Ultimate Kickin' Jalapeno Ranch Flavored Potato Chips
 10 Ruffles Ultimate Sweet & Smokin' BBQ Flavored Potato Chips
 11 Sunchips French Onion Flavored Multigrain Snacks
 12 Sunchips Garden Salsa Flavored Multigrain Snacks
 13 Sunchips Harvest Cheddar Flavored Multigrain Snacks
 14 Sunchips Original Multigrain Snacks
 15 Sunchips Sweet & Spicy BBQ Flavored Multigrain Snacks
 16 Tostitos Artisan Recipes Baked Three Cheese Queso Flavored Tortilla
 17 Chips
 18 Tostitos Artisan Recipes Grilled Red Pepper & Tomato Salsa Flavored
 19 Tortilla Chips
 20 Tostitos Artisan Recipes Roasted Garlic & Black Bean Tortilla Chips
 21 Tostitos Artisan Recipes Toasted Southwestern Spices Tortilla Chips
 22 Tostitos Hint Of Jalapeno Flavored Tortilla Chips
 23 Tostitos Hint Of Lime Flavored Tortilla Chips
 24 Tostitos Hint Of Pepper Jack Flavored Tortilla Chips

25 179. The following persons are expressly excluded from the Class: (1) Defendant and
 26 its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the
 27 proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its
 28 staff.

29 180. This action can be maintained as a class action because there is a well-defined
 30 community of interest in the litigation and the proposed Class is easily ascertainable.

31 181. Numerosity: Based upon Defendant's publicly available sales data with respect to
 32 the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that
 33 joinder of all Class members is impracticable.

34 182. Common Questions Predominate: This action involves common questions of law
 35 and fact applicable to each Class member that predominate over questions that affect only
 36 individual Class members. Thus, proof of a common set of facts will establish the right of each
 37 Class member to recover. Questions of law and fact common to each Class member include, for
 38 example:

39 a. Whether Defendant engaged in unlawful, unfair or deceptive
 40 business practices by failing to properly package and label its

Purchased Products sold to consumers;

- b. Whether the Purchased Products were misbranded as a matter of law;
- c. Whether Defendant made improper and misleading nutrient content and health claims;
- d. Whether Defendant made unlawful and misleading “All Natural,” “No MSG” or “0g Trans Fat” or “low sodium” or “good source of” or “healthy” claims;
- f. Whether Defendant violated California Bus. & Prof. Code § 17200 *et seq.*, California Bus. & Prof. Code § 17500 *et seq.*, the Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*, and the Sherman Law;
- g. Whether Plaintiffs and the Class are entitled to equitable and/or injunctive relief; and
- h. Whether Defendant’s unlawful, unfair and/or deceptive practices harmed Plaintiffs and the Class.

183. Typicality: Plaintiffs' claims are typical of the claims of the Class because

Plaintiffs bought Defendant’s Purchased Products during the Class Period. Defendant’s unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiffs and the Class sustained similar injuries arising out of Defendant’s conduct in violation of California law. The injuries of each member of the Class were caused directly by Defendant’s wrongful conduct. In addition, the factual underpinning of Defendant’s misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs’ claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

184. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class.

Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to

1 the Class members and will diligently discharge those duties by vigorously seeking the maximum
 2 possible recovery for the Class.

3 185. Superiority: There is no plain, speedy or adequate remedy other than by
 4 maintenance of this class action. The prosecution of individual remedies by members of the Class
 5 will tend to establish inconsistent standards of conduct for Defendant and result in the impairment
 6 of Class members' rights and the disposition of their interests through actions to which they were
 7 not parties. Class action treatment will permit a large number of similarly situated persons to
 8 prosecute their common claims in a single forum simultaneously, efficiently and without the
 9 unnecessary duplication of effort and expense that numerous individual actions would engender.
 10 Further, as the damages suffered by individual members of the Class may be relatively small, the
 11 expense and burden of individual litigation would make it difficult or impossible for individual
 12 members of the Class to redress the wrongs done to them, while an important public interest will
 13 be served by addressing the matter as a class action. Class treatment of common questions of law
 14 and fact would also be superior to multiple individual actions or piecemeal litigation in that class
 15 treatment will conserve the resources of the Court and the litigants, and will promote consistency
 16 and efficiency of adjudication.

17 186. The prerequisites to maintaining a class action for injunctive or equitable relief
 18 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds
 19 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief
 20 with respect to the Class as a whole.

21 187. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3)
 22 are met as questions of law or fact common to class members predominate over any questions
 23 affecting only individual members, and a class action is superior to other available methods for
 24 fairly and efficiently adjudicating the controversy.

25 188. Plaintiffs and Plaintiffs' counsel are unaware of any difficulties that are likely to
 26 be encountered in the management of this action that would preclude its maintenance as a class
 27 action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Business and Professions Code § 17200, *et seq.*
Unlawful Business Acts and Practices**

189. Plaintiffs incorporate by reference each allegation set forth above.

190. Defendant's conduct constitutes unlawful business acts and practices.

191. Defendant sold Purchased Products and Class Products in California during the Period.

Class Period.

192. Defendant is a corporation and, therefore, is a "person" within the meaning of the Sherman Law.

193. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the misbranded food provisions of Article 6 of the Sherman Law.

194. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of Defendant's violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.

195. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of Defendant's violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

196. Defendant sold Plaintiffs and the Class Purchased Products and Class Products that were not capable of being sold, or held legally and have no economic value and which were legally worthless. Plaintiffs and the Class paid a premium price for the Purchased Products and Class Products.

197. As a result of Defendant's illegal business practices, Plaintiffs and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any Class Member any money paid for the Purchased Products and Class Products.

198. Defendant's unlawful business acts present a threat and reasonable continued likelihood of injury to Plaintiffs and the Class.

1 199. As a result of Defendant's conduct, Plaintiffs and the Class, pursuant to Business
2 and Professions Code § 17203, are entitled to an order enjoining such future conduct by
3 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's
4 ill-gotten gains and restore any money paid for Defendant's Purchased Products by Plaintiffs and
5 any money paid for Defendant's Class Products purchased by the Class.

SECOND CAUSE OF ACTION

**Business and Professions Code § 17200, *et seq.*
Unfair Business Acts and Practices**

200. Plaintiffs incorporate by reference each allegation set forth above.

9 201. Defendant's conduct as set forth herein constitutes unfair business acts and
10 practices.

11 202. Defendant sold Purchased Products and Class Products in California during the
12 Class Period.

13 203. Plaintiffs and members of the Class suffered a substantial injury by virtue of
14 buying Defendant's Purchased Products and Class Products that they would not have purchased
15 absent Defendant's illegal conduct.

16 204. Defendant's deceptive marketing, advertising, packaging and labeling of its
17 Purchased Products and Class Products and its sale of unsalable misbranded products that were
18 illegal to possess was of no benefit to consumers, and the harm to consumers and competition is
19 substantial.

205. Defendant sold Plaintiffs and the Class Purchased Products and Class Products
20
21 that were not capable of being legally sold or held and that have no economic value and were
22 legally worthless. Plaintiffs and the Class paid a premium price for the Purchased Products and
23 Class Products.

24 206. Plaintiffs and the Class who purchased Defendant's Purchased Products and
25 Class Products had no way of reasonably knowing that the products were misbranded and were
26 not properly marketed, advertised, packaged and labeled, and thus could not have reasonably
27 avoided the injury each of them suffered.

1 207. The consequences of Defendant's conduct as set forth herein outweigh any
2 justification, motive or reason therefor. Defendant's conduct is and continues to be immoral,
3 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiffs and
4 the Class.

5 208. As a result of Defendant's conduct, Plaintiffs and the Class, pursuant to Business
6 and Professions Code § 17203, are entitled to an order enjoining such future conduct by
7 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's
8 ill-gotten gains and restore any money paid for Defendant's Purchased Products by Plaintiffs and
9 any money paid for Defendant's Class Products purchased the Class.

THIRD CAUSE OF ACTION
Business and Professions Code § 17200, *et seq.*
Fraudulent Business Acts and Practices

12 209. Plaintiffs incorporate by reference each allegation set forth above.
13 210. Defendant's conduct as set forth herein constitutes fraudulent business practices
14 under California Business and Professions Code sections § 17200, *et seq.*

15 211. Defendant sold Purchased Products and Class Products in California during the
16 Class Period.

17 212. Defendant's misleading marketing, advertising, packaging and labeling of the
18 Purchased Products and Class Products and misrepresentation that the products were salable,
19 capable of possession and not misbranded were likely to deceive reasonable consumers, and in
20 fact, Plaintiffs and members of the Class were deceived. Defendant has engaged in fraudulent
21 business acts and practices.

213. Defendant's fraud and deception caused Plaintiffs and the Class to purchase
214. Defendant's Purchased Products and Class Products that they would otherwise not have
215. purchased had they known the true nature of those products.

214. Defendant sold Plaintiffs and the Class Purchased Products that were not capable
215 of being sold or held legally and that have no economic value and were legally worthless.
216 Plaintiffs and the Class paid a premium price for the Purchased Products and the Class Products.

1 215. As a result of Defendant's conduct as set forth herein, Plaintiffs and the Class,
2 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
3 conduct by Defendant, and such other orders and judgments which may be necessary to disgorge
4 Defendant's ill-gotten gains and restore any money paid for Defendant's Purchased Products by
5 Plaintiffs and any money paid for the Class Products by the Class.

FOURTH CAUSE OF ACTION
Business and Professions Code § 17500, *et seq.*
Misleading and Deceptive Advertising

8 216. Plaintiffs incorporate by reference each allegation set forth above.

9 217. Plaintiffs assert this cause of action for violations of California Business and

10 Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendant.

11 218. Defendant sold Purchased Products and Class Products in California during the

12 Class Period.

13 219. Defendant engaged in a scheme of offering Defendant's Purchased Products and
14 Class Products for sale to Plaintiffs and members of the Class by way of product labeling. These
15 labels misrepresented and/or omitted the true contents and nature of Defendant's Purchased
16 Products and Class Products. Defendant's advertisements and inducements were made within
17 California and come within the definition of advertising as contained in Business and Professions
18 Code §17500, *et seq.* in that such labels were intended as inducements to purchase Defendant's
19 Purchased Products and Class Products and are statements disseminated by Defendant to
20 Plaintiffs and the Class that were intended to reach members of the Class. Defendant knew, or in
21 the exercise of reasonable care should have known, that these statements were misleading and
22 deceptive as set forth herein.

23 220. In furtherance of its plan and scheme, Defendant prepared and distributed within
24 California and nationwide via product labels, statements that misleadingly and deceptively
25 represented the composition and the nature of Defendant's Purchased Products and Class
26 Products. Plaintiffs and the Class necessarily and reasonably relied on Defendant's materials, and
27 were the intended targets of such representations.

1 221. Defendant's conduct in disseminating misleading and deceptive statements in
2 California and nationwide to Plaintiffs and the Class was and is likely to deceive reasonable
3 consumers by obfuscating the true composition and nature of Defendant's Purchased Products
4 and Class Products in violation of the "misleading prong" of California Business and Professions
5 Code § 17500, *et seq.*

6 222. As a result of Defendant's violations of the "misleading prong" of California
7 Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the
8 expense of Plaintiffs and the Class. Misbranded products cannot be legally sold or held and have
9 no economic value and are legally worthless. Plaintiffs and the Class paid a premium price for the
10 Purchased Products and Class Products.

11 223. Plaintiffs and the Class, pursuant to Business and Professions Code § 17535, are
12 entitled to an order enjoining such future conduct by Defendant, and such other orders and
13 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any
14 money paid for Defendant's Purchased Products or Class Products by Plaintiffs and the Class.

FIFTH CAUSE OF ACTION
Business and Professions Code § 17500, *et seq.*
Untrue Advertising

17 224. Plaintiffs incorporate by reference each allegation set forth above.

18 225. Plaintiffs assert this cause of action against Defendant for violations of California

19 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

20 226. Defendant sold Purchased Products and Class Products in California during the
21 Class Period.

22 227. Defendant engaged in a scheme of offering Defendant's Purchased Products and
23 Class Products for sale to Plaintiffs and the Class by way of product labels. These materials
24 misrepresented and/or omitted the true contents and nature of Defendant's Purchased Products
25 and Class Products. Defendant's labels were made in California and come within the definition
26 of advertising as contained in Business and Professions Code §17500, *et seq.* in that the labels
27 were intended as inducements to purchase Defendant's Purchased Products and Class Products,

1 and are statements disseminated by Defendant to Plaintiffs and the Class. Defendant knew, or in
2 the exercise of reasonable care should have known, that these statements were untrue.

3 228. In furtherance of its plan and scheme, Defendant prepared and distributed in
4 California and nationwide via product labels, statements that falsely advertise the composition of
5 Defendant's Purchased Products and Class Products, and falsely misrepresented the nature of
6 those products. Plaintiffs and the Class were the intended targets of such representations and
7 would reasonably be deceived by Defendant's materials.

8 229. Defendant's conduct in disseminating untrue labels throughout California deceived
9 Plaintiffs and members of the Class by obfuscating the contents, nature and quality of
10 Defendant's Purchased Products and Class Products in violation of the "untrue prong" of
11 California Business and Professions Code § 17500.

12 230. As a result of Defendant’s violations of the “untrue prong” of California Business
13 and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of
14 Plaintiffs and the Class. Misbranded products cannot be legally sold or held and have no
15 economic value and are legally worthless. Plaintiffs and the Class paid a premium price for the
16 Purchased Products and Class Products.

17 231. Plaintiffs and the Class, pursuant to Business and Professions Code § 17535, are
18 entitled to an order enjoining such future conduct by Defendant, and such other orders and
19 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any
20 money paid for Defendant's Purchased Products or Class Products by Plaintiffs and the Class.

SIXTH CAUSE OF ACTION

Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*

232. Plaintiffs incorporate by reference each allegation set forth above.

23 233. This cause of action is brought pursuant to the CLRA. Defendant's violations of
24 the CLRA are willful, oppressive and fraudulent, thus supporting an award of punitive damages.

234. On April 20, 2012, Plaintiffs sent their Notice and Demand Letter pursuant to the
26 CLRA, Cal. Civ. Code §§ 1782(a)(1) and (2), via certified mail to Defendant at their headquarters
27 in Plano, Texas. To date, Defendant has not responded to Plaintiffs Notice and Demand Letter.

1 235. Over thirty days have passed since Plaintiffs sent Defendant their Notice and
 2 Demand Letter. Plaintiffs now seek damages under the CLRA.

3 236. Plaintiffs and the Class, having given proper notice to Defendant, are entitled to
 4 actual and punitive damages against Defendant for their violations of the CLRA. In addition,
 5 pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiffs and the Class are entitled to an order enjoining
 6 the above-described acts and practices, providing restitution to Plaintiffs and the Class, ordering
 7 payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the
 8 Court pursuant to Cal. Civ. Code § 1780.

9 237. Defendant's actions, representations and conduct have violated, and continue to
 10 violate the CLRA, because they extend to transactions that are intended to result, or which have
 11 resulted, in the sale of goods to consumers.

12 238. Defendant sold Purchased Products and Class Products in California and
 13 throughout the United States during the Class Period.

14 239. Plaintiffs and members of the Class are "consumers" as that term is defined by the
 15 CLRA in Cal. Civ. Code §1761(d).

16 240. Defendant's Purchased Products and Class Products were and are "goods" within
 17 the meaning of Cal. Civ. Code §1761(a).

18 241. By engaging in the conduct set forth herein, Defendant violated and continues to
 19 violate Sections 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair
 20 methods of competition and unfair or fraudulent acts or practices in that they misrepresent the
 21 particular ingredients, characteristics, uses, benefits and quantities of the goods.

22 242. By engaging in the conduct set forth herein, Defendant violated and continues to
 23 violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods
 24 of competition and unfair or fraudulent acts or practices in that they misrepresent the particular
 25 standard, quality or grade of the goods.

26 243. By engaging in the conduct set forth herein, Defendant violated and continues to
 27 violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods
 28

1 of competition and unfair or fraudulent acts or practices in that they advertise goods with the
2 intent not to sell the goods as advertised.

3 244. By engaging in the conduct set forth herein, Defendant has violated and continues
4 to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair
5 methods of competition and unfair or fraudulent acts or practices in that they represent that a
6 subject of a transaction has been supplied in accordance with a previous representation when it
7 has not.

8 245. Plaintiffs requests that the Court enjoin Defendant from continuing to employ the
9 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2) and
10 award Plaintiffs actual and punitive damages. If Defendant is not restrained from engaging in
11 these practices in the future, Plaintiffs and the Class will continue to suffer harm.

JURY DEMAND

13 Plaintiffs hereby demand a trial by jury of their claims.

PRAYER FOR RELIEF

15 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, and
16 on behalf of the general public, pray for judgment against Defendant as follows:

17 A. For an order certifying this case as a class action and appointing Plaintiffs and
18 their counsel to represent the Class;

19 B. For an order awarding, as appropriate, damages, restitution or disgorgement to
20 Plaintiffs and the Class;

21 C. For an order requiring Defendant to immediately cease and desist from selling its
22 Purchased Products and Class Products listed in violation of law; enjoining Defendant from
23 continuing to market, advertise, distribute, and sell these products in the unlawful manner
24 described herein; and ordering Defendant to engage in corrective action;

25 D. For all equitable remedies available pursuant to Cal. Civ. Code § 1780;

26 ||| E. For an order awarding attorneys' fees and costs;

27 F. For an order awarding punitive damages;

28 G. For an order awarding pre-and post-judgment interest; and

1 H. For an order providing such further relief as this Court deems proper.

2 Dated: May 1, 2013

3 Respectfully submitted,

4 /s/ Ben F. Pierce Gore
5 Ben F. Pierce Gore (SBN 128515)
6 PRATT & ASSOCIATES
7 1871 The Alameda, Suite 425
8 San Jose, CA 95126
9 Telephone: (408) 429-6506
10 Fax: (408) 369-0752
11 pgore@prattattorneys.com

12 *Attorneys for Plaintiffs*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28